

City Council Meeting Agenda October 6, 2025

In accordance with the Open Public Meetings Act (OPMA), the Vancouver City Council meeting will be open to in-person attendance. Options for viewing and/or participating in the meeting remotely will also be accommodated. The City Council will be attending this meeting in person.

All City Council workshops and meetings are broadcast ([live closed captioning available](#)), CVTV cable channels 23 / HD 323, and on the [City's Facebook page](#).

Public testimony will be accepted regarding any matter on the agenda below. Advance registration will be required.

Unless otherwise announced by the Presiding Officer, each speaker may testify once for up to three minutes under each public testimony opportunity below and will be asked to provide their name and city of residence for the record.

Testimony will be accepted in the following manner:

- **Written comments submitted in advance:** [Email comments to the City Council](#) until 12:00 p.m. October 6, 2025. Comments will be compiled and sent to the City Council and entered into the record.
- **In-person or remote testimony during the meeting:** Register in-person at City Hall. In-person registration is open until 6:30 p.m. on October 6, 2025. Instructions will be provided on-site. Register to testify online. Online registration is open until 12:00 p.m. on October 6, 2025.

Visit the [city's website](#) for more information and to register under Community Testimony or call the City Manager's Office at (360) 487-8600.

Further instructions for accessing the virtual meeting (for remote testimony) will be provided upon registration.

Upon request, printouts of agenda materials will be provided, including large print.

Workshops: 4:00 - 6:00 p.m.

Vancouver City Hall - Council Chambers - 415 W 6th Street, Vancouver WA

Vancouver Municipal Code 14.26 Critical Aquifer Recharge Areas Update (Approximately 30 minutes)

Mehrin Selimgir, Water Engineering Manager, Kris Olinger, Utility Engineering Program Manager, Mehrin.Selimgir@cityofvancouver.us, kris.olinger@cityofvancouver.us

Small Business Programs Update

(Approximately 45 minutes, to immediately follow the previous workshop)

Chris Harder, Deputy Economic Development Director, chris.harder@cityofvancouver.us

State Legislative Agenda

(Approximately 45 minutes, to immediately follow the previous workshop)

Aaron Lande, Assistant City Manager, aaron.lande@cityofvancouver.us

Council Dinner / Administrative Updates (6:00 - 6:30 PM)

Regular Council Meeting

6:30 PM

Vancouver City Hall - Council Chambers - 415 W 6th Street, Vancouver WA

Pledge of Allegiance

Call to Order and Roll Call

Proclamations

Red Ribbon Week

Disability Employment Awareness Month

Community Communication

This is the place on the agenda where the public is invited to speak to Council regarding any matter on the Agenda not already scheduled for Public Hearing. (Separate instructions are provided for offering testimony on Public Hearing when applicable.) This includes the option to testify about Workshops. Members of the public addressing Council are requested to give their name and city of residence for the audio record. Speakers are to limit their testimony to a total of three minutes for all items combined. RCW 42.17A.555 and City Council Policy 100-32 prohibit the use of public facilities to support or oppose any ballot measure, or to support or oppose any candidate for elective office. Any violation of these rules could result in a suspension of speaking privileges during public comment periods at City Council Meetings for 90 days or longer for multiple offenses.

Consent Agenda

The following items will be passed by a single motion to approve all listed actions and resolutions. There will be no discussion on these items unless requested by Council. If discussion is requested, the item will be moved from the Consent Agenda and considered separately – after the motion has been made and passed to approve the remaining items.

1. Construction Acceptance - Pearson Field Electrical Replacement Project - ITB 24-01

Staff Report: 196-25

Request: On Monday, October 6, 2025, accept the Pearson Field Electrical Replacement Project as constructed by Northeast Electric, LLC of Woodland, Washington, and authorize release of the bond, subject to receipt of all documentation required by law.

Meredith Fox, Airport Manager, meredith.fox@cityofvancouver.us

2. Construction Acceptance - Esther Short Bell Tower and Pumphouse Repairs Projects - ITB #24-31

Staff Report: 197-25

Request: On October 6, 2025, accept the facilities as constructed by LEE Contractors, LLC, and authorize release of the contractor's retainage, subject to receipt of all documentation required by law.

Jean Singer, Capital Projects Manager, jean.singer@cityofvancouver.us

3. Construction Acceptance - Vancouver Fire Department Fire Station 5 Logistics Warehouse Project - ITB #24-45

Staff Report: 198-25

Request: On October 6, 2025, accept the facilities as constructed by Construction Services Group, Inc., and authorize release of the contractor's retainage, subject to receipt of all documentation required by law.

Jean Singer, Capital Projects Manager, jean.singer@cityofvancouver.us

4. Contract Amendment — Annual Generator Maintenance & Repair- C-101813

Staff Report: 199-25

Request: On Monday, October 6, 2025, authorize the City Manager, or designee, to finalize and execute Amendment #5 to contract C-101813 with Power Systems West, up to a maximum of \$575,000, and modifying the term through January 25, 2027.

Brian Taylor, Operations Superintendent, brian.taylor@cityofvancouver.us

5. Contract Amendment — Moore Lacofano Goltsman Inc (MIG) for Bagley Park Phase 1 Development - C-101193

Staff Report: 200-25

Request: On Monday, October 6, 2025, authorize the City Manager to execute Amendment #2 of contract C-101193 with MIG Landscape Architecture to increase by \$1,035,510 for a new total contract amount of \$1,477,870 and authorize the City Manager, or designee, to amend this contract as needed, up to an additional 10% of the new contract value per the amendment.

Terry Snyder, Park Development Manager, Terry.Snyder@cityofvancouver.us

6. Vancouver Fire Department Station #8 Seismic Upgrade – General Contractor/Construction Manager Contract Approval – INLINE Commercial Construction, dba INLINE

Staff Report: 201-25

Request: On Monday, October 6, 2025, authorize the City Manager, or designee, to enter into a preconstruction services contract with INLINE Commercial Construction of Aloha, OR with an hourly, not to exceed amount of \$221,200 and fixed fee specified general conditions of \$909,920.

Lam Vuong, Facilities Capital Projects Manager, Lam.Vuong@cityofvancouver.us

7. Heights Site C Disposition and Development Agreement

A RESOLUTION relating to the approval of a disposition and development agreement between the City of Vancouver and Palindrome Heights Limited Partnership; establishing the terms and conditions under which the Heights District Site C lot will be developed and ground leased by the City to Palindrome Heights Limited Partnership; and authorizing the City Manager to execute the disposition and development agreement.

Staff Report: 202-25

Request: On Monday, October 6, 2025, advance the resolution, setting the date for the second reading and public hearing for October 13, 2025 to finalize and approve the resolution approving the Disposition and Development Agreement (DDA) between the City of Vancouver and Palindrome Heights Limited Partnership (DDA) and authorize the City Manager, or designee, to execute the agreement, related implementation documents and certain amendments to the DDA.

Amy Stewart, Real Estate Project Manager, Patrick Quinton, Economic Development Director, amy.stewart@cityofvancouver.us, patrick.quinton@cityofvancouver.us

8. Heights Site P Family Building Disposition and Development Agreement

A RESOLUTION relating to the approval of a disposition and development agreement between the City of Vancouver and Vancouver Heights Family Development Co., LLC; establishing the terms and conditions under which the Heights District Site P lot will be developed and ground leased by the City to Vancouver Heights Family Development Co., LLC; and authorizing the City Manager to execute the disposition and development agreement.

Staff Report: 203-25

Request: On Monday, October 6, 2025, advance the resolution setting the date for the second reading and public hearing for October 13, 2025 to adopt the resolution approving the Disposition and Development Agreement between the City of Vancouver and Vancouver Heights Family Development Co., LLC (DDA) and authorize the City Manager, or designee, to execute the agreement in its substantive form, related implementation documents and certain amendments to the DDA.

Amy Stewart, Real Estate Project Manager, Patrick Quinton, Economic Development Director, amy.stewart@cityofvancouver.us, patrick.quinton@cityofvancouver.us

9. Amended and Restated Condemnation Ordinance

AN AMENDED AND RESTATED ORDINANCE in the public interest relating to construction for the public use of transportation and streets and sidewalks; declaring the public necessity for and providing for the acquisition by the City of Vancouver by eminent domain of certain property and a temporary construction easement, located in the City limits at 5300 MacArthur Boulevard and described herein, required to construct such public street improvements and related facilities within the City of Vancouver, Washington; taking final action to authorize condemnation of such property; authorizing the City Attorney to prosecute eminent domain proceedings and to stipulate in mitigation of damages; providing for payment of just compensation in exchange for such property; and providing for an immediate effective date.

Staff Report: 204-25

Request: On Monday, October 6, 2025, advance the ordinance, setting the date for the second reading and public hearing for October 13, 2025.

Ryan Lopossa, Streets and Transportation Manager, Amy Stewart, Real Estate Project Manager, Hassan Abdalla, Engineering Manager,
ryan.lopossa@cityofvancouver.us, amy.stewart@cityofvancouver.us,
hassan.abdalla@cityofvancouver.us

10. Approval of Claim Vouchers

Request: Approve claim vouchers for October 6, 2025.

New Business

11. Consider Ethics Complaint Against Councilmember Harless

Staff Report: 205-25

Request: Make a determination as to whether or not the Council should dismiss the Complaint, refer the allegations to a Hearings Examiner to conduct an investigation, or take any other action.

- Dismiss the Complaint and take no further action.
- Refer the Complaint to the Hearings Examiner to conduct an investigation.
- Impose sanctions under City Council Policy 100-06 Section 11.0.
- Impose sanctions under City Council Policy 100-36 Section 9.0.

Nena Cook, City Attorney, nena.cook@cityofvancouver.us

Communications

A. From the Council

B. From the Mayor

C. From the City Manager

Adjournment

City Hall is served by C-TRAN. Route information and schedules are available online at www.c-tran.com. You also may reach C-TRAN at (360) 695-0123 for more information on times, fares, and routes.

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VMC 14.26 Updates Water Resources Protection Ordinance

Kris Olinger,
Utilities Engineering Manager
Mehrin Selimgir,
Water Engineering Manager
Public Works
October 6, 2025



Agenda

- Purpose of Update
- Water Resources Protection Ordinance
- Critical Aquifer Recharge Area
- Updated Capture Zones
- Next Steps





Purpose of Update

- Washington Growth Management Act (GMA) requires regulations that protect critical areas
- 2023 WSP's Best Available Science Recommendations

Critical Area	Vancouver Ordinance
Critical Aquifer Recharge Areas	VMC 14.26
Frequently Flooded Areas	VMC 20.740
Fish and wildlife habitat conservation areas	VMC 20.740
Geologically hazardous areas	VMC 20.740
Wetlands	VMC 20.740



Water Resources Protection Ordinance (WRPO)

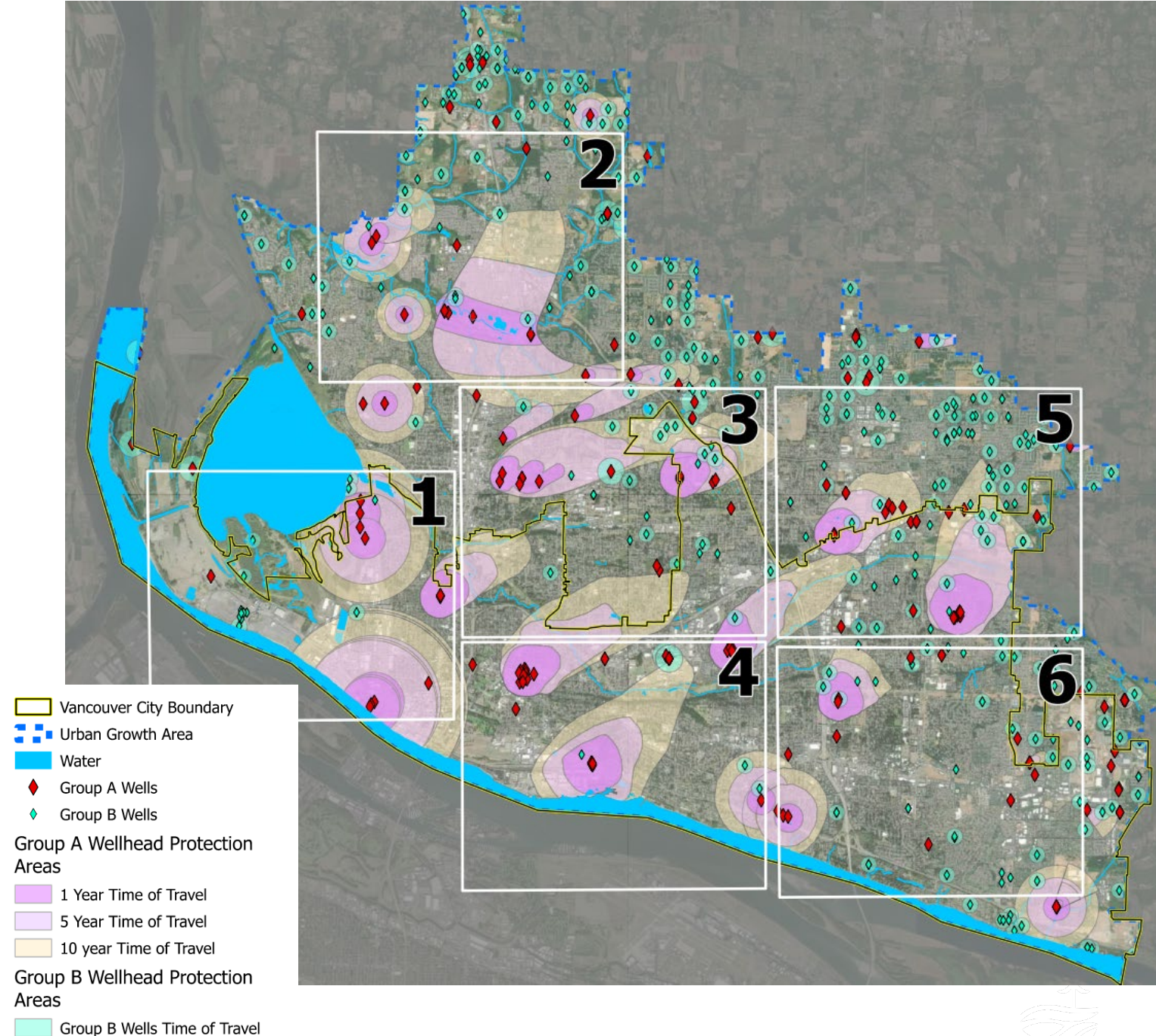
Protecting our water source

- Establishes measures to protect Vancouver's water resources, including both surface and groundwater
- Adopted in 2003, amended in 2016 and 2022 for continued compliance with the City's stormwater permit mandates
- Troutdale Aquifer System is an Environmental Protection Agency-designated sole source aquifer
- Implemented by Public Works



Critical Aquifer Recharge Area

- For potable water use
- All within city limits
- Distance groundwater travels within one year to reach well
- Primary aquifer recharge through stormwater infiltration



Critical Aquifer Recharge Area Protection Measures

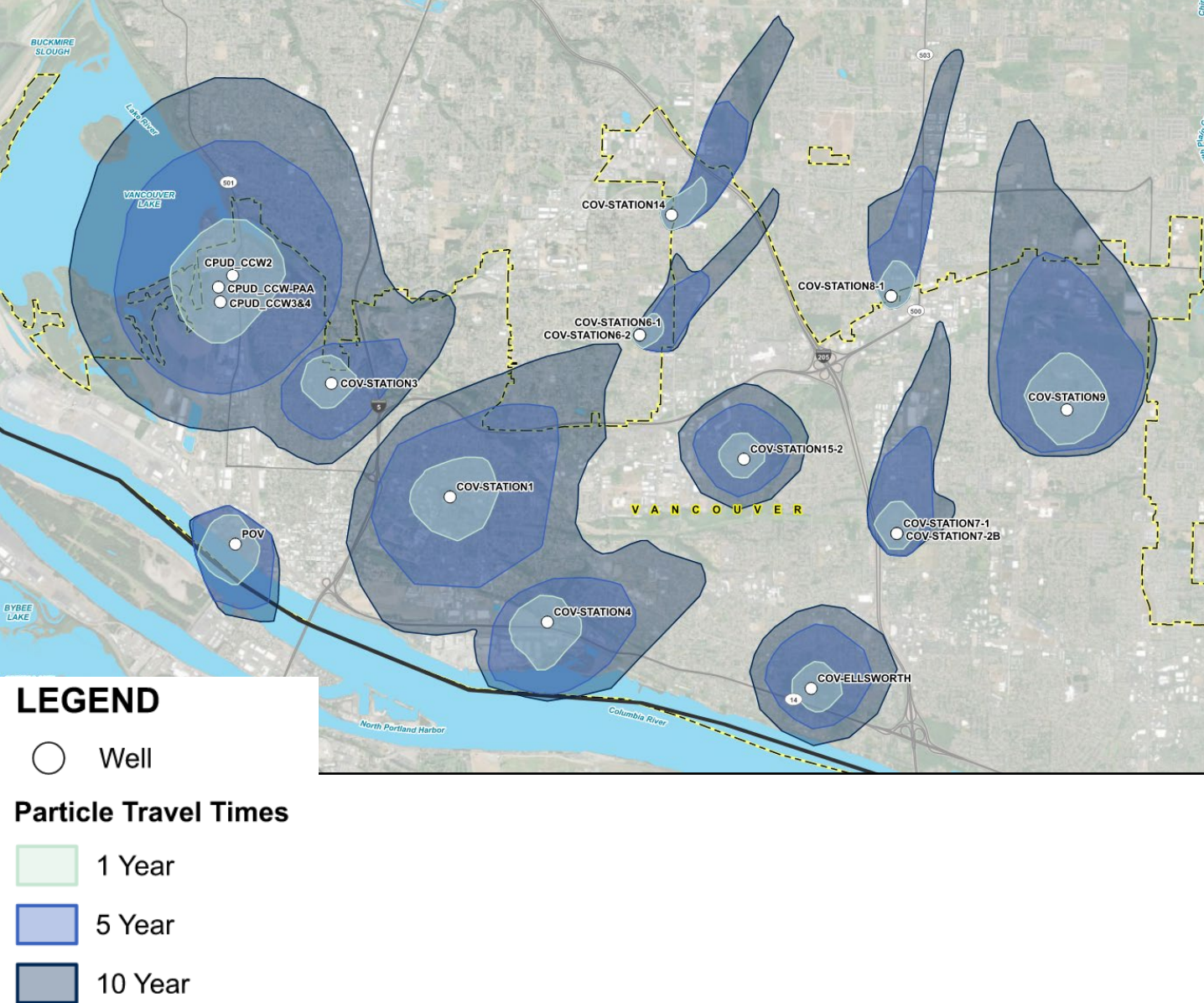
Prohibit activities that pose groundwater contamination threat

- Examples of development prohibitions:
 - Hard Chrome Plating Operations
 - Chemical Lagoons and Pits
 - Hazardous Material Disposal Sites
 - Radioactive Waste Disposal Sites
- Critical Aquifer Recharge Area Report
 - Support the documentation of best available science to demonstrate that the functions and values of the Critical Aquifer Recharge Area will be protected



Updated Capture Zones

- Hydraulic modeling to delineate 1, 5, 10-year capture zones
- Includes City wells, Port of Vancouver wells and Clark Public Utilities wells within city limits
- Replaces 1900' buffer and are subject to more stringent protective measures than Critical Aquifer Recharge Area



Capture Zone Protection Measures

Restrict activities that pose groundwater contamination threat



- Examples of further restrictions on land use activity:
 - New bulk fuel operations
 - New septic systems
 - New heating oil tanks
 - New underground hazardous materials storage
- Hydrogeologic Assessments
 - Level 1 Report – Required for all activities
 - Level 2 Report – Required for higher risk activities



Next Steps

- Guiding responsible land development
- Protecting the City's drinking water sources
- Identify and mitigate risks before contamination
- **First Reading on Nov 17**
- **Public Hearing on Dec 8**



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WASHINGTON

Proposed Small Business Programs

Chris Harder
Deputy Director, EP&H

Victor Saldanha
Small Business &
Entrepreneurship Program
Manager, EP&H

October 6, 2025



Agenda

- Strategic Alignment
- FPFA Funded Programs
 - Revolving Loan Fund
 - Safeguard and Revitalize Grant
 - Legal Assistance Grant
- Product to Market Program
- Next Steps
- Questions & Discussion

Strategic Alignment

Economic Development Strategy Goals

1. Establish pathways to accessible quality jobs and reduce barriers to economic opportunity.
2. Create opportunities for generational wealth, especially for underserved communities, by strengthening support for small businesses.
3. Position Vancouver as an inclusive center of innovation and entrepreneurship.
4. Invest in neighborhood commercial districts that result in safe, vibrant, and accessible communities.

Fourth Plain for All Investment Strategy

- \$1.5m earmarked for Economic Development & Enhanced Small Business Support



Strategic Alignment

Coordinated Package of Small Business Programs

Program	FPFA Investment Strategy	Economic Development Strategy Action
Revolving Loan Fund	YES	YES (Goal 2 Action C)
Safeguard & Revitalization Grant	YES	Consistent with desired outcomes of Goals 2 & 4
Legal Assistance Grant	YES	Consistent with desired outcomes of Goal 2
Product-to-Market Program	Consistent with needs of Fourth Plain businesses	YES (Goal 2 Action A)



Fourth Plain For All Funded Programs

Responsive to needs identified by small businesses in the Fourth Plain Investment Area

1. Revolving Loan Fund
2. Safeguard & Revitalization Grant
3. Legal Assistance Grant





Documented Needs

Challenges & Opportunities Specific to Fourth Plain

- One of most culturally diverse areas in Vancouver
- Businesses and residents face persistent economic disparities
- High entrepreneurial potential



Process to Date



Prioritization of community input and decision-making





Revolving Loan Fund

\$1.2M (FPFA Allocation)

- Unable to secure traditional financing
- Capacity building of local community-based org
- Additional fund capitalization to help expand citywide
- Desired outcomes: business growth, local wealth-building, job creation





Safeguard & Revitalization

\$250K (FPFA Allocation)

- Grant administered through a community-based organization
- Focused on street-facing small businesses
- Ex: Security lighting, cameras, graffiti removal, window and door repair, etc.
- Desired outcomes: safer and more vibrant business corridor





Legal Assistance

\$50K (FPFA Allocation)

- Expand access to legal services for small businesses
- Designated nonprofit attorneys or attorneys within the FPFA
- Ex: business incorporation, contracts, employee law, dispute resolution, etc.
- Desired outcomes: improved business stability and regulatory compliance



Citywide Product-to-Market Program

Support the growth and expansion of Vancouver-based consumer product startups





Documented Needs

Gaps & Opportunities in Product-to-Market Ecosystem

- Vancouver's growth creating demand for diverse consumer goods
- Entrepreneurs often begin in informal settings
- Region a consumer product hub, but local entrepreneurs have limited access to resources
- Certain entrepreneurs being excluded from growth



Product-to-Market

\$250K (Biennial Budget & Spring Supplemental)

- Cohort-based training + individual technical assistance
- Multi-channel: e-commerce, brick and mortar retail, mobile vending
- Ex: market research, packaging & distribution, retail partnerships, licensing, etc.
- Desired outcome: business growth through access to sales markets



Next Steps

Winter 2025 – Spring 2026

RFPs & Partner Selection

- Finalize and approve program approach
- Issue RFPs to select service delivery partners
- Council award and contract approval

Summer 2026

Launch Programs

- Develop marketing and outreach strategy
- Open applications for all four programs
- Coordinate services and through selected partner organizations

Ongoing

Monitoring & Reporting

- Quarterly progress reports and annual impact summaries
- Adjust program design based on data and feedback
- Prepare case studies and success stories



Discussion & Questions



DATE: October 6, 2025

TO: Vancouver City Council

FROM: Lon Pluckhahn, City Manager

RE: New Small Business Support Programs

CC: Patrick Quinton, Chris Harder, Victor Saldanha

I. Introduction

Economic Prosperity & Housing staff are proposing a comprehensive and coordinated package of small business support programs in alignment with the City's recently adopted 5-Year Economic Development Strategy. The four programs are:

- **Revolving Loan Fund**
- **Safeguard and Revitalization Grant**
- **Legal Assistance Grant**
- **Product to Market Program**

Together, these programs represent a significant step in advancing the Strategy's four goals:

1. Establish pathways to accessible quality jobs and reduce barriers to economic opportunity.
2. Create opportunities for generational wealth, especially for underserved communities, by strengthening support for small businesses.
3. Position Vancouver as an inclusive center of innovation and entrepreneurship.
4. Invest in neighborhood commercial districts that result in safe, vibrant, and accessible communities.

In addition, the package of small business programs is responsive to the goals and desired outcomes outlined in the Fourth Plain for All (FPFA) Investment Strategy's Economic Development Investment Area. The first three proposed programs—Revolving Loan Fund, Safeguard & Revitalization Grant, and Legal Assistance Grant—strategically leverage \$1.5 million originally received from the American Rescue Plan Act (ARPA) to promote inclusive economic development in the Fourth Plain Investment Area (FPIA). The Product to Market Program is supported by \$250,000 previously approved by City Council during recent budget cycles.

By increasing access to capital, revitalizing storefronts, expanding legal support, and improving local product-to-market resources, the City is responding to both the immediate needs of Fourth Plain businesses and the broader City vision of supporting small business growth as a cornerstone of Vancouver's economic future.

The City of Vancouver is launching these small business programs in alignment with RCW 35.21.703, which affirms the role of cities in supporting economic development efforts, including through partnerships with nonprofit partners.

II. Background and Need

Revolving Loan Fund, Safeguard & Revitalization Grant, and Legal Assistance Grant

The Fourth Plain Investment Area (FPIA) is home to more than 25,000 people representing numerous cultural and ethnic groups, immigrant populations, and low-income residents. According to the City's Fourth Plain for All Investment Strategy, residents and businesses in the Investment Area face persistent economic disparities:

- 50% or more households have incomes below 60% Area Median Income (AMI)
- 24% of residents live in poverty
- 74% are renters
- 20%+ lack a high school diploma
- High prevalence of HUD-designated low-income census tracts

Despite these challenges, the FPIA demonstrates strong entrepreneurial potential:

- 15% of residents operate home-based businesses
- 65% have considered entrepreneurship as a pathway to economic opportunity
- Fourth Plain has many established small businesses, but they often lack access to the infrastructure and resources needed to scale

Small businesses in Fourth Plain face challenges such as vandalism and graffiti, access to legal services, and difficulty securing the capital they need to grow. The proposed programs address these intersecting challenges with both place-based and business focused investments.

Product to Market Program

Launching a Product to Market Program is a key initiative (Goal 2 Action A) in the City's Economic Development Strategy. The need for a dedicated program to help early-stage consumer product startups scale was identified through conversations with entrepreneurs and local small business support organizations, along with analysis of economic trends. Below are some high-level findings:

- Vancouver's growth creates demand for diverse consumer goods but also heightens competition for local entrepreneurs to compete with larger brands or national businesses.

- Entrepreneurs, particularly those from underserved communities, often begin in informal settings—home-based production, cottage food sales, temporary pop-ups, etc.—but lack pathways to larger sales opportunities.
- The region is considered a consumer product hub. However, compared to communities in the Greater Portland Metro on the Oregon side, Vancouver entrepreneurs face limited access to key infrastructure such as commissary kitchens, co-packing facilities, distribution networks, and specialized business technical assistance to help them scale.
- Multiple Vancouver neighborhoods fall within Housing and Urban Development (HUD) designated Low-Income Qualifies Census Tracts and significant economic disparities exist within the community, reinforcing the importance of targeted support toward businesses and entrepreneurs most at risk of being excluded from growth.

III. Process to Date

FPFA Community-Led Engagement

The three Fourth Plain for All funded small business programs were developed through a robust, equity-centered engagement process spanning more than two years. Grounded in the principle of community co-creation, this process prioritized multilingual outreach, participatory budgeting, and inclusive policy development to shape responsive investments in the Fourth Plain Investment Area.

2023: Development of Community Priorities

- *Phase 1: Community visioning and identifying post-COVID challenges.* Feedback informed project vision, values, and evaluation criteria.
 - *Investment Strategy Committee (ISC):* Formation of a community-based advisory body to shape investment priorities, refine funding criteria, and review programmatic categories.
 - *Broad Community Engagement:*
 - Multilingual ambassadors conducted outreach with cultural groups.
 - Surveys, open houses, tabling events, and neighborhood presentations solicited feedback from residents, businesses, and civic groups.
 - Business canvassing and listening sessions elevated the voices of corridor small businesses and entrepreneurs.
 - Ongoing social media, mailings, and web updates provided transparency and access.
- *Phase 2: Participatory budgeting and prioritization of investment categories.* A second community survey helped to refine programmatic categories.

2024–Present: Small Business Engagement and Program Design

- Convened a Small Business Advisory Group, made up of 14 small business owners in the FPIA, to identify and prioritize investment options and design programs.
- Alongside members of the Small Business Advisory Group, presented program recommendations to the FPFA Investment Steering Committee and received endorsement to move forward with proposed programs.

- Economic Prosperity & Housing (EP&H) staff and the City Attorney's Office completed legal due diligence to appropriately structure the proposed programs.

Product to Market Stakeholder Engagement & Program Design

The Product to Market Program emerged from analysis, planning, and engagement to ensure small business owners—particularly consumer product entrepreneurs—have the resources and infrastructure to scale through retail, e-commerce, farmers markets, and mobile vending.

Summer 2024-Winter 2025 — Analysis and Strategic Alignment

- The Comprehensive Plan's Economic Conditions & Opportunities Analysis and the Economic Development Strategy's Situation Assessment both identified the need for enhanced support of small businesses and access to resources to scale.
- Multiple work sessions with the Economic Development Strategy's Community Leaders Steering Committee, Core Planning Team, and National Thought Leaders Group highlighted gaps in access to commissary kitchens, co-packing facilities, distribution networks and specialized business technical assistance. These groups recommended the inclusion of a Product to Market Program in the City's Economic Development Strategy to help consumer product entrepreneurs grow and thrive in Vancouver.

Winter-Summer 2025 — Program Development

- Organized one-on-one consultation meetings with more than 10 regional organizations and stakeholders in the product-to-market space, such as the Hispanic Metropolitan Chamber, New Seasons Market, Vancouver Farmer's Market, and the Clark College Culinary Institute. Conversations focused on clarifying ecosystem gaps and discussing program concepts.
- Convened community partners in a work session to share preliminary program delivery models, solicit feedback and input, and get advice on implementation.
- Completed legal due diligence to appropriately structure the service delivery elements of the program

IV. High-Level Program Summaries

Revolving Loan Fund (RLF)

- Goal: Increase access to capital for small businesses (less than 50 employees) unable to qualify for loans from traditional banks or credit unions and build long-term community lending capacity in Vancouver.
- Funding: \$1,200,000 (FPFA allocated resources)
- Notable Features: (a) The selected national or regional nonprofit Community Development Financial Institution (CDFI) is required to support the capacity building of a local community-based organization to administer the RLF in the long-term. (b) Initial fund resources would focus exclusively on the FPIA, with additional capitalization of the RLF to help expand citywide.
- Desired Outcomes: Business growth, local wealth-building, job creation

Safeguard and Revitalize Grant

- Goal: Improve and promote corridor safety and vibrancy.

New Small Business Support Programs

October 6, 2025

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- Funding: \$250,000 (FPFA allocated resources)
- Notable Feature: Targets storefront small businesses in Fourth Plain in need of safety and revitalization upgrades.
- Desired Outcome: Safer, more vibrant business corridor.

Small Business Legal Assistance Grant

- Goal: Expand access to legal services to enhance small business resilience and compliance.
- Funding: \$50,000 (FPFA allocated resources)
Notable Feature: Legal services to be provided by designated nonprofit attorneys in Washington or attorneys within the FPIA.
- Desired Outcome: Improved business stability and regulatory compliance.

Product to Market Program

- Goal: Help Vancouver entrepreneurs—especially those from underserved communities—bring consumer products to market.
- Funding: \$250,000 (2025-26 Biennial Budget and 2025 Spring Supplemental)
- Notable Feature: A multi-channel approach (e-commerce, brick and mortar retail, mobile vending) that enables entrepreneurs to identify their best path to growth.
- Desired Outcome: Business growth through access to new sales markets

For detailed program overviews please see attached draft program scope and details documents.

VI. Implementation Next Steps

Phase 1 (Winter 2025-Spring 2026) – Issue Public RFPs & Partner Selection

- Issue RFPs for:
 - Nonprofit CDFI partner (RLF)
 - Community-based organization program administrator (Safeguard & Revitalize Grant)
 - Community-based organization program administrator(s) (Product to Market Program)
 - Note: Legal service providers (Legal Assistance Grant) do not require an RFP
- RFP awards and/or contracts approved by Council

Phase 2 (Summer 2026) – Initial Rollout of Programs

- Develop centralized marketing and outreach strategies
- Open applications for all three programs related to Fourth Plain for All Initiative
- Open applications for the Product to Market program
- Coordinate technical assistance and service delivery through partner organizations

Phase 3 (Ongoing) – Monitoring & Reporting

- Require quarterly progress reports and annual impact summaries
- Adjust program design based on data and participant feedback
- Prepare case studies and success stories for the City Council and community partners

VII. Conclusion

The City of Vancouver's integrated small business support strategy represents a bold, equity-centered investment consistent with the values and goals of both the Fourth Plain for All Investment Strategy and the 5-Year Economic Development Strategy. These programs advance the City of Vancouver's commitment to inclusive growth and economic opportunity for all Vancouver residents.

VIII. Attachments

1. Draft Revolving Loan Fund RFP Scope & Program Details
2. Draft Safeguard and Revitalization RFP Scope & Program Details
3. Draft Legal Assistance Program Details
4. Draft Product to Market RFP Scope & Program Details

Draft Revolving Loan Fund RFP Scope & Program Details

Secured Project Funding

\$1,200,000 allocated to Fourth Plain for All Investment Strategy

General Description

The City of Vancouver seeks proposals from qualified nonprofit Community Development Financial Institutions (CDFIs) to administer a Revolving Loan Fund (RLF) aimed at promoting economic development in underserved communities, initially within the Fourth Plain Investment Area, but eventually citywide.

The City of Vancouver, in alignment with RCW 35.21.703, intends to contract with a nonprofit CDFI to launch a RLF to support small businesses in alignment with the City's Fourth Plain for All Investment Strategy and the recently adopted 5-Year Economic Development Strategy. The RLF will be initially capitalized using \$1,200,000 originally received from the American Rescue Plan Act (ARPA) to promote inclusive economic development within the Fourth Plain Investment Area in Vancouver, WA. Over time, the City will work with the selected nonprofit CDFI to leverage additional resources to expand the RLF citywide. The RLF's primary purpose is to increase access to capital for businesses unable to secure traditional financing.

A key requirement of the selected nonprofit CDFI will be to provide capacity-building support to a local community-based organization ("Local Partner"), assisting them in building the necessary infrastructure, skills, and resources to become a certified nonprofit CDFI. The long-term goal of the program is for the Local Partner to manage the RLF independently.

Background

In November 2023, Vancouver City Council adopted the Fourth Plain for All Investment Strategy, committing \$25 million in ARPA funds. This comprehensive effort supports five broader investment areas:

- Housing
- Community Building & Public Health
- Parks & Public Space
- Transportation
- Economic Development

To request other formats, please contact:

Victor Saldanha | 360-852-0739 | TTY: 711 | victor.saldanha@cityofvancouver.us
P.O. Box 1995 | Vancouver, WA 98668-1995 | cityofvancouver.us

The Revolving Loan Fund is a key deliverable of the Economic Development investment area and supports the growth and competitiveness of small businesses and entrepreneurs within the Fourth Plain district, particularly those from historically underserved communities. In addition, the RLF is a key action identified in the City's recently adopted 5-Year Economic Development Strategy.

The Fourth Plain Investment Area is Clark County's most diverse district:

- More than 10 languages are spoken.
- High concentrations of Latinx, Pacific Islander, and foreign-born residents.
- Significant inequities in income, health, and access to opportunity.
- Approximately 25% of residents live in extreme poverty.
- Household income averages 60% of city median.
- Many neighborhoods qualify as HUD Qualified Census Tracts

Program Details

1. Revolving Loan Fund Administration

The selected nonprofit CDFI will:

- Administer the RLF to provide financing for small businesses, initially in the Fourth Plain Investment Area.
- Help secure one-to-one matching capital to expand lending capacity citywide.
- Develop loan criteria, application processes, and repayment schedules.
- Manage and monitor the loan portfolio and ensure compliance with terms.
- Report on outcomes, disbursements, repayments, and community impact.
- Provide technical assistance to loan recipients as needed.
- Assist the City in the identification and selection of the Local Partner.

2. Capacity Building of Local Partner

The nonprofit CDFI will support the transition of the Local Partner into a certified nonprofit CDFI by:

- Conducting a needs assessment.
- Providing technical assistance in financial management, governance, compliance, and fundraising.
- Guiding the Local Partner through the formal CDFI certification process.
- Offering ongoing administrative support to build sustainability and long-term operations.
- Assisting with loan disbursement, monitoring, and repayment processes.
- Contributing to program marketing, outreach, and education efforts to promote awareness of the RLF.

3. Expected Program Deliverables and Outcomes

- Selection of an experienced nonprofit CDFI capable of leveraging the City's \$1.2M contribution into at least \$2M in lending capacity.
- Capacity building and transition of Local Partner to a nonprofit CDFI
- Local Partner assumes lending responsibility long-term.
- Technical assistance and loan readiness support to lending applicants.
- Regular impact reports on fund utilization, business outcomes, and job creation.

To request other formats, please contact:

Victor Saldanha | 360-487-0739 | TTY: 711 | victor.saldanha@cityofvancouver.us

- Increase access to capital for small businesses initially in the Fourth Plain Investment Area and eventually citywide as additional funds are raised.

Partner/CDFI Selection Process and Evaluation Criteria

1. Proposal Submission Requirements

- Cover Letter
- Financial Statements (audited last 2 years + current interims)
- Organizational Experience
- Proposed Approach (RLF administration + Local Partner capacity building)
- Work Plan and Timeline
- Staffing Plan
- Evaluation Metrics
- Letters of Support

Note: Procurement will create more detailed Request for Proposal (RFP) submission requirements.

2. Selection Process

- Initial Submission Review
- Follow-up Questions to Applicants
- Final Application Submission
- Interviews/Presentations with shortlisted candidates
- Final Selection & Recommendation
- City Council Approval
- Contract Execution

Note: Procurement will provide additional details regarding the selection process to in the RFP

3. Proposal Scoring

Experience & Qualifications (25%)

- Demonstrated ability as a nonprofit CDFI to provide accessible and flexible lending to small businesses, supported by experience in program incubation, training, and entrepreneurship development.
- Proven track record of collaborating with community-based organizations to conduct outreach, deliver technical assistance, and strengthen organizational capacity to expand small business support networks.

Capacity Building & Partnership (40%)

- Demonstrates clear plans to strengthen both Local Partner and participating entrepreneurs, ensuring sustainable skills, leadership, and infrastructure development.
- Emphasizes collaborative approaches that expand the local ecosystem's lending capacity, creating stronger pipelines of support and shared accountability.
- Shows how partners align funding, technical expertise, and community assets to amplify impact, broaden access, and reinforce long-term capacity across the ecosystem.

Impact on Community (25%)

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Victor Saldanha | 360-487-0739 | TTY: 711 | victor.saldanha@cityofvancouver.us

- Clear alignment with community needs, especially for underserved entrepreneurs.
- Expected outcomes for inclusive economic development, wealth-building, and neighborhood vitality.
- Commitment to advancing historically underserved small businesses.

Staffing & Expertise (5%)

- Qualifications and expertise of proposed staff in relation to program design and delivery.
- Demonstrated ability to manage and sustain program operations effectively.

Evaluation Metrics & Reporting (5%)

- Clear plan for data collection, measurement, and evaluation of program success.
- Transparent and consistent reporting methods to track impact and outcomes.

Fund Structure & Proposed Lending Framework

1. Promissory Note / Loan to Nonprofit CDFI
 - City will lend \$1.2M for 5 years, extendable to another 5 years.
 - Funds expected to revolve up to twice over 10 years.
 - Funds restricted initially to Fourth Plain Investment Area; additional capitalization may be used citywide.
 - 1% annual interest returned to the City; revenue used to support capacity-building and help cover loan administration fees.
 - Loans are capped at \$100,000 per business with max 10-year term (final terms to be finalized with nonprofit CDFI Partner)
 - Quarterly outreach events with Local Partner required.
 - Loan guarantees up to 20% per loan, capped at \$120,000 aggregate of all losses.
2. Lending Capital Requirements
 - Loan term ≤ 10 years.
 - Eligible uses: equipment, working capital, debt consolidation (if ≥10% cashflow improvement).
 - Must pass “No Credit Elsewhere” test (see Exhibit C).
 - Ineligible businesses listed in Exhibit B.
 - Rates within 2% of Small Business Administration microloan rates.
3. Reporting Requirements
 - Quarterly Closing Reports (loans closed, demographics, AMI, use of funds, etc.).
 - Annual Portfolio Report (loan status/health).
 - Business Success Outcomes (impact and testimonials).
4. Technical Assistance & Loan Readiness Requirements
CDFI Partner and Local Partner must provide (as needed):
 - Pre-loan and post-loan technical assistance.
 - Offer of credit counseling support for denied applicants.
 - Loan-readiness support (financials, documentation).
 - Training or certification course for approved borrowers.

To request other formats, please contact:

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Exhibits

- Exhibit A: Fourth Plain Investment Area
- Exhibit B: Ineligible Businesses list
- Exhibit C: No Credit Elsewhere criteria

Exhibit A

Fourth Plain Investment Area:

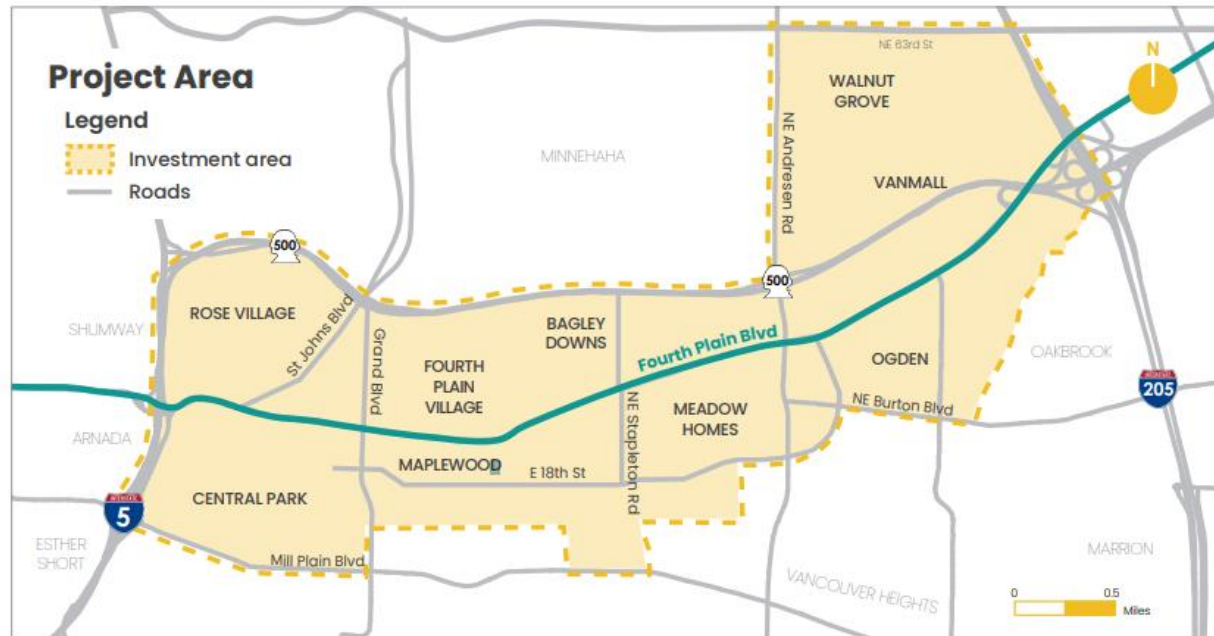


Figure 1. Fourth Plain for All Investment Area

Exhibit B

Ineligible Businesses (Alignment with SBA eligibility for CDFI Lending):

- Any business engaged in illegal practices
- Companion, escort and dating services.
- Massage parlors
- Sexual encounter clubs, organizations, and websites
- Sexual in nature businesses such as bikini barista stands
- Growth, processing or retailing of cannabis
- Gun shops
- Lotteries or raffles
- Pornographic material
- Pyramid schemes, multi-level sales, etc.
- Gambling establishments or casinos
- Pawnshops
- Check cashing, pay day lending
- Non-Profit or any business that is not for profit

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Exhibit C

No Credit Elsewhere - Client must employ less than 50 people and meet at least one criterion below to be considered eligible for a loan:

- 100% or less of Average Median Income for at least one business owner of 20% or greater ownership.
- Credit Score lower than 640 for at least one owner of 20% or greater ownership.
- New business of less than 2 years in operation, which cannot meet the requirements of providing financials to support a traditional loan.
- Attestation of denial of credit from a bank or credit union.

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Draft Safeguard and Revitalization Grant RFP Scope & Program Details

Secured Project Funding

\$250,000 allocated to Fourth Plain for All Investment Strategy

Introduction

In alignment with RCW 35.21.703, the City intends to contract with a nonprofit community-based organization (the “Contractor”) to administer the Safeguard and Revitalize Grant Program as part of the Fourth Plain for All Investment Strategy. This program provides financial assistance to small businesses within the Fourth Plain Investment Area (FPIA) to support property and building improvements to enhance neighborhood safety, security, and appearance. The Contractor will be responsible for reviewing applications, selecting grant recipients, distributing funds, verifying documentation, and reporting outcomes to the City.

Background

In November 2023, Vancouver City Council adopted the Fourth Plain for All Investment Strategy, committing \$25 million in ARPA funds. This comprehensive effort supports five broader investment areas:

- Housing
- Community Building & Public Health
- Parks & Public Space
- Transportation
- Economic Development

The Safeguard and Revitalize Grant is a key deliverable of the Economic Development investment area and will directly assist small businesses in improving safety, security, and physical storefront conditions.

The Fourth Plain Investment Area is Clark County’s most diverse district:

- More than 10 languages are spoken.
- High concentrations of Latinx, Pacific Islander, and foreign-born residents.
- Significant inequities in income, health, and access to opportunity.
- Approximately 25% of residents live in extreme poverty.

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- Household income averages 60% of city median.
- Many neighborhoods qualify as HUD Qualified Census Tracts

Program Details

1. Grant Administration Responsibilities
 - Application Review: Evaluate applications for completeness and compliance with program requirements.
 - Fund Distribution: Disburse funds to eligible businesses in accordance with program guidelines.
 - Documentation Collection: Verify all required documentation, including business licenses, invoices, police reports (if applicable), photos of damages, and proof of payment.
 - Reporting to City: Submit regular financial and impact reports documenting program outcomes.
 - Application Review: Evaluate applications for completeness and compliance with program requirements
2. Administrative Fees
 - Administrative fees capped at 10% of total program budget.
 - Contractor must track and reconcile all administrative costs upon program completion.
3. Grant Review and Payment Process
 - The Contractor will review applications, verify eligibility, and determine awards.
 - Approved funds will be disbursed within one year of grant approval.
 - The Contractor must provide regular reporting on grant distribution, business outcomes, and program impact.
4. Uses of Funds: Max \$2500 per business entity or owner

Eligible Uses:

 - Security lighting, alarm systems, cameras, and gates.
 - Graffiti paint/removal.
 - Window and door repairs or replacements.

Ineligible Uses:

 - Investment properties, home-based businesses, landlords, or tenants.
 - Replacement of stolen merchandise.
 - Insurance or monitoring costs for security equipment.
 - Staff costs or reimbursement for lost revenue.
5. Expected Program Deliverables and Outcomes
 - Measurable increase in business stability and retention rates within the Fourth Plain Investment Area.
 - Improved storefront appearance, directly supporting corridor vibrancy and increasing customer foot traffic.
 - Reduction in repeat incidents of vandalism or property disrepair.

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- Enhanced customer and employee safety, leading to improved perceptions of neighborhood security.
- Monthly program updates, photo documentation of improvements, and final reports with demographic and financial metrics.

Business Eligibility

1. Businesses must meet all of the following:
 - Location: Must operate within the designated Fourth Plain Investment Area (Exhibit A).
 - Size: Fewer than 25 employees.
 - Type: Must be a storefront business (no home-based businesses).
 - Status: Open for in-person customer service with posted business hours.
 - Licensing: Must have a valid, current City of Vancouver business license.
 - Food Trucks: Must operate from a designated space within the Investment Area.
 - Income Restrictions: At least one business owner with greater than 20% ownership must be at or below 80% of Area Median Income (AMI).
 - Priority: Business from underserved communities will be prioritized.
2. Ineligible Business Types
 - Businesses engaged in illegal practices.
 - Cannabis-related businesses.
 - Sexually oriented businesses.
 - Businesses leasing to tenants.

Partner Selection Process and Evaluation Criteria

1. Proposal Submission Requirements

Proposals must include:

 - Cover Letter
 - Organizational Profile: History and qualifications.
 - Experience: Description of prior grant administration of similar programs.
 - Work Plan: Detailed approach to fulfilling grant programs responsibilities
 - Budget: Including administrative fees and program cost breakdown.
 - References/Case Studies: Relevant partnerships or past grant programs.

Additional Required Documents:

 - Proof of nonprofit/tax-exempt status.
 - Relevant certifications or qualifications.
 - Contact information for key personnel.

Note: Procurement will create more detailed Request for Proposal (RFP) submission requirements.

2. Selection Process
 - Initial Submission Review
 - Follow-up Questions to Applicants

To request other formats, please contact:

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- Final Application Submission
- Interviews/Presentations with shortlisted candidates
- Final Selection & Recommendation
- City Council Approval
- Contract Execution

Note: Procurement will provide additional details regarding the selection process to in the RFP

3. Proposal Evaluation Criteria

Experience and Qualifications (50%)

- Demonstrated expertise in small business development, program administration, or similar initiatives.
- Strong track record of success delivering measurable outcomes for entrepreneurs or community-focused projects.
- Evidence of organizational stability and history of effective program management.

Capacity and Ability (30%)

- Organizational capacity to manage and deliver the proposed program.
- Staff expertise, resources, and infrastructure to ensure effective implementation.
- Ability to adapt and respond to challenges while maintaining program goals.
- Ability to effectively market the program to target recipients.

Work Plan (10%)

- Strength, clarity, and feasibility of the proposed work plan.
- Clearly defined objectives, timelines, and deliverables.
- Logical alignment between proposed activities and desired outcomes.

Budget (10%)

- Appropriateness and transparency of the proposed budget.
- Efficient allocation of resources to maximize program impact.
- Justification of costs in relation to program goals and outcomes.

Exhibits

- Exhibit A: Fourth Plain Investment Area

To request other formats, please contact:

Victor Saldanha | 360-487-0739 | TTY: 711 | victor.saldanha@cityofvancouver.us

Exhibit A: Fourth Plain Investment Area

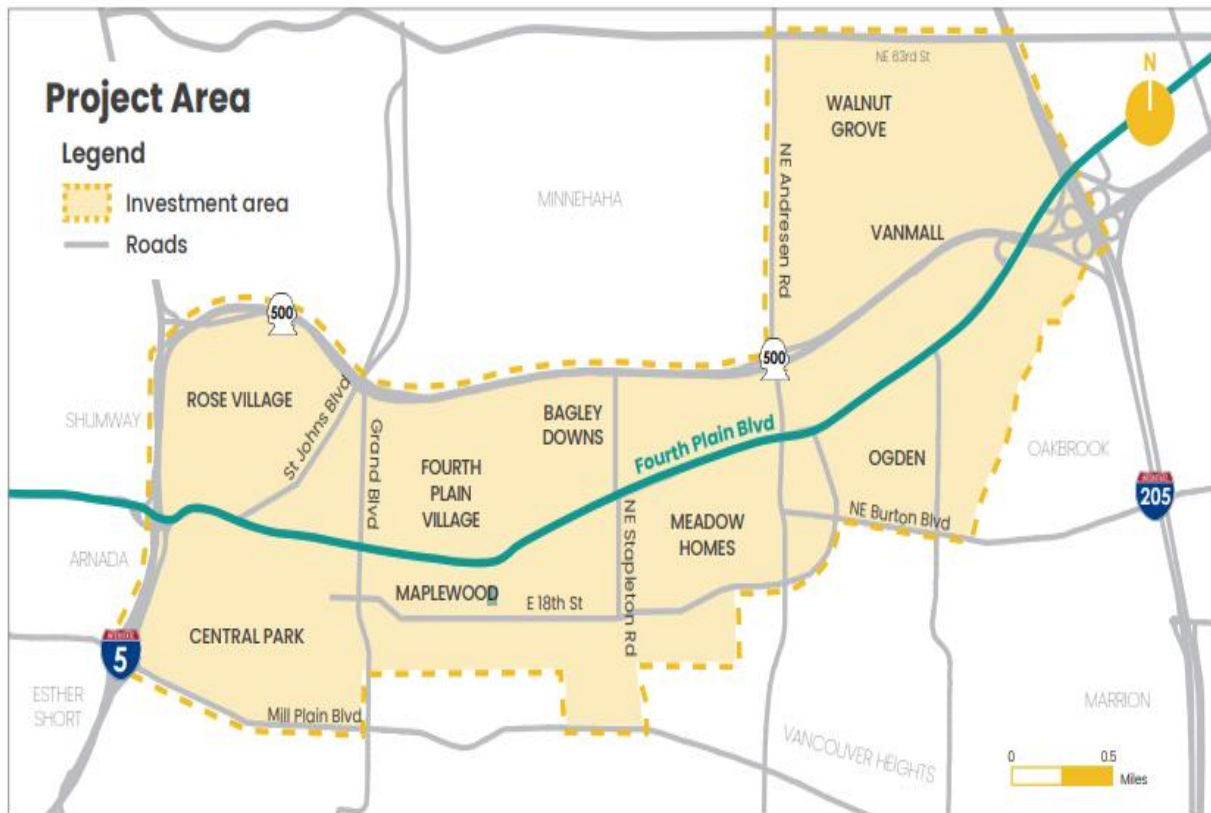


Figure 1. Fourth Plain for All Investment Area

Draft Small Business Legal Assistance Grant Program Details

Secured Project Funding:

\$50,000 allocated to the Fourth Plain for All Investment Strategy

Introduction

This program provides financial assistance to small businesses within the Fourth Plain Investment Area to access critical legal services that support business compliance, stability, and growth. The City will be responsible for reviewing applications, selecting grant recipients, coordinating delivery of legal services, verifying documentation, and reporting outcomes to the City.

Background

In November 2023, Vancouver City Council adopted the Fourth Plain for All Investment Strategy, committing \$25 million in ARPA funds. This comprehensive effort supports five broader investment areas:

- Housing
- Community Building & Public Health
- Parks & Public Space
- Transportation
- Economic Development

The Small Business Legal Assistance Grant is a key deliverable of the Economic Development investment area and will directly assist small businesses in accessing affordable legal services

The Fourth Plain Investment Area is Clark County's most diverse district:

- More than 10 languages are spoken.
- High concentrations of Latinx, Pacific Islander, and foreign-born residents.
- Significant inequities in income, health, and access to opportunity.
- Approximately 25% of residents live in extreme poverty.
- Household income averages 60% of city median.
- Many neighborhoods qualify as HUD Qualified Census Tracts

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Program Details

1. Grant Administration Responsibilities

The City will oversee:

- Application Review: Evaluate applications for completeness and compliance with program requirements.
- Fund Distribution: Disburse funds to eligible lawyers for approved legal services.
- Documentation Collection: Verify required documentation, including business licenses, invoices, proof of services rendered, and payment.
- Reporting to City: Submit regular financial and impact reports documenting program outcomes.

2. Eligible Uses of Funds: Max \$1000 per business entity or owner

- Business entity formation
- Contract drafting and review
- Employment law guidance
- Trademark and copyright advice
- Regulatory compliance assistance
- Dispute resolution

3. Expected Program Deliverables and Outcomes

- Reduction in legal disputes and vulnerabilities.
- Increased business capacity to scale and remain in operation.
- Strengthened participation of historically underserved businesses in the local economy.
- Quarterly program updates.
- Outcome reports with legal service metrics and demographic data.

Business Eligibility

1. Businesses must meet all of the following:

- Location: Must operate within the designated Fourth Plain Investment Area (Exhibit A).
- Size: Fewer than 25 employees.
- Type: Must be a full-time business.
- Licensing: Must have a valid, current City of Vancouver business license.
- Food Trucks: Must operate from a designated space within the Investment Area.
- Income Restrictions: At least one business owner with greater than 20% ownership must be at or below 100% of Area Median Income (AMI).
- Priority: underserved businesses will be prioritized.

2. Ineligible Business Types

- Businesses engaged in illegal practices.
- Cannabis-related businesses.
- Sexually oriented businesses.
- Businesses leasing to other tenants.

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Small Business Grant Application Process

- Application Submission – Small businesses apply with financial documentation and legal need statement.
- Grant Review and Award– Applications will be reviewed by a committee made up of small business and/or small business stakeholders in the Fourth Plain Investment Area. Priority will be given to historically underserved small business applicants.
- Service Provision – The City will help match approved small businesses to a list of qualified legal service providers (designated nonprofit attorneys or attorneys within the FPIA) for pro bono or grant-funded services. Approved funds will be disbursed within one year of grant approval.
- Reporting – The City must provide regular reporting on grant distribution, business outcomes, and program impact.

Exhibits

- Exhibit A: Fourth Plain Investment Area

Exhibit A

Fourth Plain Investment Area

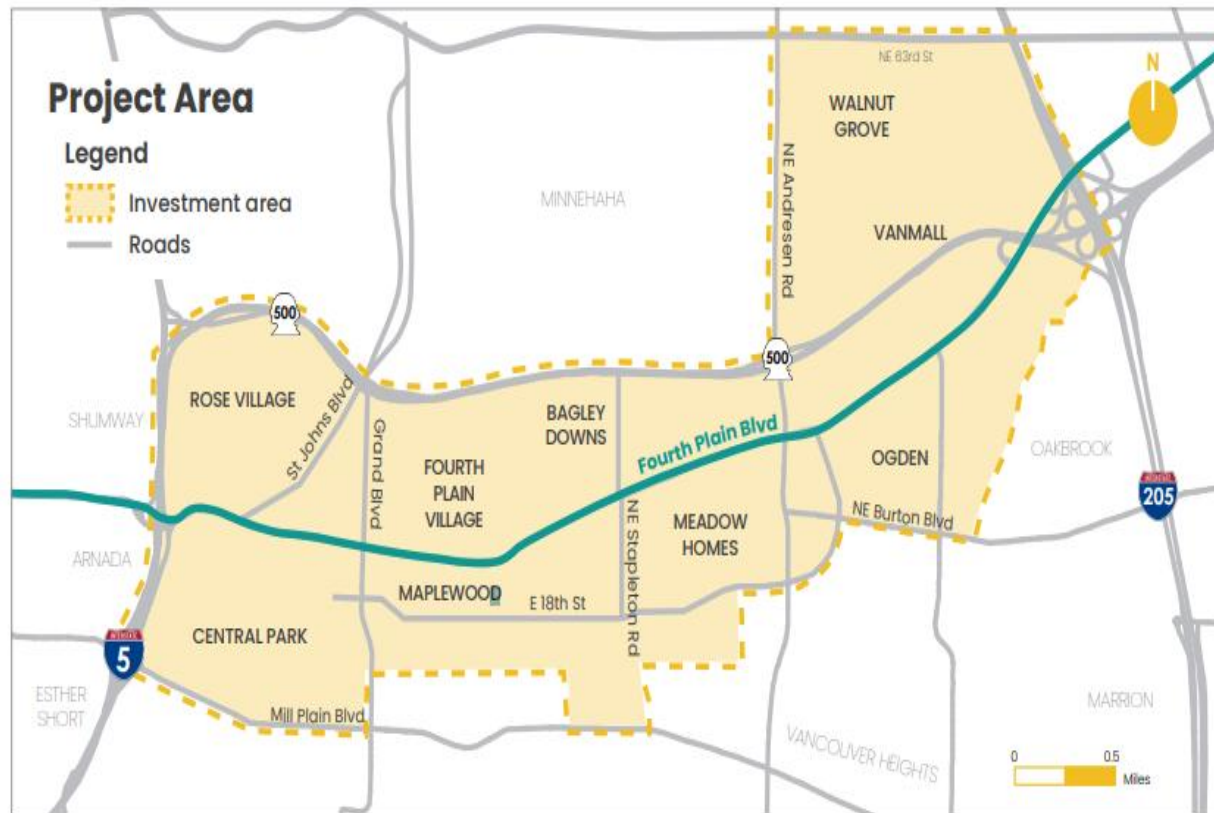


Figure 1. Fourth Plain for All Investment Area

Draft Product to Market RFP Scope & Program Details

Secured Project Funding:

\$250,000 from 2025-26 Biennial Budget and 2025 Spring Supplemental

Introduction

In alignment with RCW 35.21.703, which affirms the role of cities in supporting economic development efforts, including through partnerships with nonprofit providers, the City of Vancouver is seeking proposals from qualified organizations to administer a newly established Product to Market Program. This program is designed to help consumer product entrepreneurs, especially those from underserved communities, expand their businesses through multi-channel product-to-market sales opportunities. The program, as currently envisioned, will enhance access to brick-and-mortar retail, e-commerce, and mobile vending sales channels while providing specialized training, mentoring, and technical assistance services.

Background

Launching a Product to Market Program is a key initiative (Goal 2 Action A) in the City's Economic Development Strategy. The need for a dedicated program to help early-stage consumer product startups scale was identified through conversations with entrepreneurs and local small business support organizations, along with analysis of economic trends. Below are some high-level findings:

- Vancouver's growth creates demand for diverse consumer goods but also heightens competition for local entrepreneurs to compete with larger brands or national businesses.
- Entrepreneurs, particularly those from underserved communities, often begin in informal settings—home-based production, cottage food sales, temporary pop-ups, etc.—but lack pathways to larger sales opportunities.
- The region is considered a consumer product hub. However, compared to communities in the Greater Portland Metro on the Oregon side, Vancouver entrepreneurs face limited access to key infrastructure such as commissary kitchens, co-packing facilities, distribution networks, and specialized business technical assistance to help them scale.
- Multiple Vancouver neighborhoods fall within Housing and Urban Development (HUD) designated Low-Income Qualifies Census Tracts and significant economic disparities

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exist within the community, reinforcing the importance of targeted support toward businesses and entrepreneurs most at risk of being excluded from growth.

Program Objectives

The Product to Market Program is structured to:

- Support Inclusive Entrepreneurship – Provide targeted support to underserved businesses.
- Enable Market Access – Build multiple retail sales channels for consumer product small businesses (e-commerce, brick-and-mortar retail, and food trucks)
- Strengthen Business Capacity – Offer technical assistance in branding, compliance, operations, and funding.
- Scale Local Products – Connect entrepreneurs with co-packing, production, and distribution infrastructure.
- Promote Community Wealth Building – Create pathways for generational wealth and long-term business sustainability.

To achieve program objectives, participants will get access to specialized services, such as:

- Cohort-based learning models.
- Market research and product development services with local partners, including enhanced access to commissary kitchens, co-packing, and mobile vending resources.
- Access to retail partnerships and networks, e-commerce onboarding services, and mobile vending/food truck opportunities.
- Packaging, branding, and digital marketing workshops.
- Business coaching, permitting/licensing navigation, and funding application support.

Potential Cohort-Based Learning & Mentoring Pathways

1. Pathway 1: E-Commerce

Suggested Target Audience

- Early-stage and established consumer product entrepreneurs
- Program Goals
- Launch or improve an e-commerce store or access to an existing e-commerce retailer
- Understand digital marketing, fulfillment, and customer acquisition
- Improved access-to-capital, suppliers, and growth resources
- Build peer networks and mentorship relationships

Key Features

- Hands-on guidance in launching or refining e-commerce platforms or strategies
- Training in search engine optimization (SEO), digital advertising, and customer analytics
- Access to e-commerce platforms (Shopify, Etsy, Amazon, etc.)
- Supplier and fulfillment connections

2. Pathway 2: Brick-and-mortar storefront/Farmers Market

Suggested Target Audience

- Entrepreneurs with early-stage or ready-to-launch consumer goods

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- Entrepreneurs specifically needing support with branding, packaging, and navigating retail/market channels

- Cottage food producers looking to scale up in-person sales

Program Goals - Support entrepreneurs to get their products:

- On retail store shelves
- Into farmers markets
- Onto restaurant menus

Key Features - Example Learning Tracks:

- Retail Track (Store Shelves): Branding, UPC codes, packaging, and wholesale selling to grocers, co-ops, and boutiques
- Farmers Market Track: Booth design, point-of-sale setup, sampling rules, and building a direct customer base
- Restaurant Track: Food safety, packaging for chefs, pricing for bulk sales, and building business-to-business relationships with kitchens

3. Pathway 3: Mobile Vending

Suggested Target Audience

- Early-stage and established food and beverage entrepreneurs
- Early-stage vendors ready to test or scale through mobile vending

Program Goals

- Help entrepreneurs legally and profitably launch a mobile food business
- Teach operations for food carts, pop-up booths, or food trucks
- Prepare vendors for events, farmers markets, and street vending
- Connect participants with equipment, permits, and startup capital

Key Features

- Food cart location access (community pods, City owned lots, parking spaces, etc.)
- Step-by-step health department application support
- Commissary kitchen access for prep and storage
- Event connections: farmers markets, block parties, festivals, college campuses
- Business license toolkit with registration, insurance, and compliance guidance

Potential Key Partnerships and Roles

A successful product to market program will require the coordination of various support organizations. A successful applicant and partner will need to demonstrate the ability to align services and partners. Below are examples of potential partners and roles:

Partner	Role
City of Vancouver Economic Development	Program coordination, marketing, permitting assistance
Vancouver Farmers Market & Local Co-ops	Vendor pathways, visibility, booth programs
E-Commerce Platforms	Training and integration
Food Truck Alliances & Festival Organizers	Mobile vendor access and route planning
Clark College Culinary Institute & Fourth Plain Commissary Kitchen	Recipe testing, co-packing, mobile kitchen support

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Portland Community College– Recipe to Market Program
 SBDC, MBDA, Hispanic Chamber, Black American Chamber, NW Native Chamber, Fourth Plain Forward
 Built Oregon & NW Co-Packing

Branding and go-to-market strategy
 Technical assistance, mentorship, financial training
 Packaging, distribution, and scale-up support

Potential Program Impact Goals

To be finalized alongside selected Program partner(s)

- Increase visibility of local products across multiple channels.
- Expand food truck and mobile vending presence in Vancouver.
- Build long-term sustainable revenue for local small businesses.
- Increased number of underserved entrepreneurs successfully launching or scaling their businesses.
- Measurable improvements in business readiness, including packaging, branding, licensing, and compliance with regulatory requirements.
- Strengthened peer-to-peer networks and mentorship opportunities.
- Growth in local consumer product visibility.

Partner(s) Selection Process and Evaluation Criteria

1. Proposal Submission Requirements

Proposals must include:

- Cover Letter: Brief introduction of the organization, highlighting mission and relevance.
- Organizational Profile: History, qualifications, and relevant experience administering similar programs.
- Program Approach & Work Plan: Detailed approach for implementing the Product to Market Program, including timeline, staffing, and coordination with partners.
- Cohort Delivery Model: Explanation of how each track (E-Commerce, Storefront, Mobile Vendor) will be structured and managed.
- Partnerships: List of confirmed or potential partners and their roles.
- Budget: Detailed program budget, including administrative fees, staffing, and direct service delivery.
- Evaluation Plan: Description of metrics, data collection methods, and reporting procedures.
- References: Case studies or references from similar programs or past collaborations.

2. Proposal Submittal/Application Options

Option 1: Applying as an Individual Organization

- Proposal must demonstrate the capacity, expertise, and experience of a single organization.
- All activities, deliverables, and budget items are managed solely by the applicant.
- Applicant is solely responsible for reporting, communications, and contractual obligations.

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Option 2: Applying as a Collaborative Team (Consortium/Partnership)

- A lead organization must be designated as the primary applicant and point of contact.
- The lead organization is responsible for submission, reporting, and financial management.
- Roles, responsibilities, and contributions of each partner organization must be clearly defined.
- Letters of commitment or MOUs from partner organizations are required.
- Proposal should include a joint work plan, shared outcomes, and a consolidated budget.

3. Selection Process

- Initial Submission Review
- Follow-up Questions to Applicants
- Final Application Submission
- Interviews/Presentations with shortlisted candidates
- Final Selection & Recommendation
- City Council Approval
- Contract Execution

4. Proposal Evaluation Criteria

Experience and Qualifications (30%)

- Demonstrated experience in small business development, training, or incubation.
- Successful administration of similar programs or cohorts.

Program Design & Cohort Delivery (25%)

- Strength and feasibility of work plan.
- Clear integration of the three cohorts with target audiences, goals, and key features.

Partnerships and Collaboration (20%)

- Quality and depth of partnerships with local institutions, nonprofits, and industry leaders.
- Ability to leverage community networks and resources.

Equity and Community Impact (15%)

- Commitment to serving underserved entrepreneurs.
- Expected outcomes for inclusive economic development.

Budget and Cost Effectiveness (10%)

- Appropriateness and transparency of proposed budget.
- Efficient use of resources to maximize direct support for entrepreneurs.
- Strategy to leverage City budget resources to create a sustainable/ongoing program.

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2026 Draft State Legislative Agenda

Aaron Lande

Assistant City Manager
City Manager's Office
October 6th, 2026



Brian Enslow

Principal
Arbutus Consulting



Today's Agenda

- Political and Financial Context
- Confirmation of Policy Principles
- Review Next Steps



Fiscal Context

- State operating revenue stable but long-term uncertainty
- Potential backfills to safety net programs and capital and transportation grants
- Capital budget might benefit from interest rates/refinancing opportunities
- Cuts to Local Government last year were manageable, might be tested this year



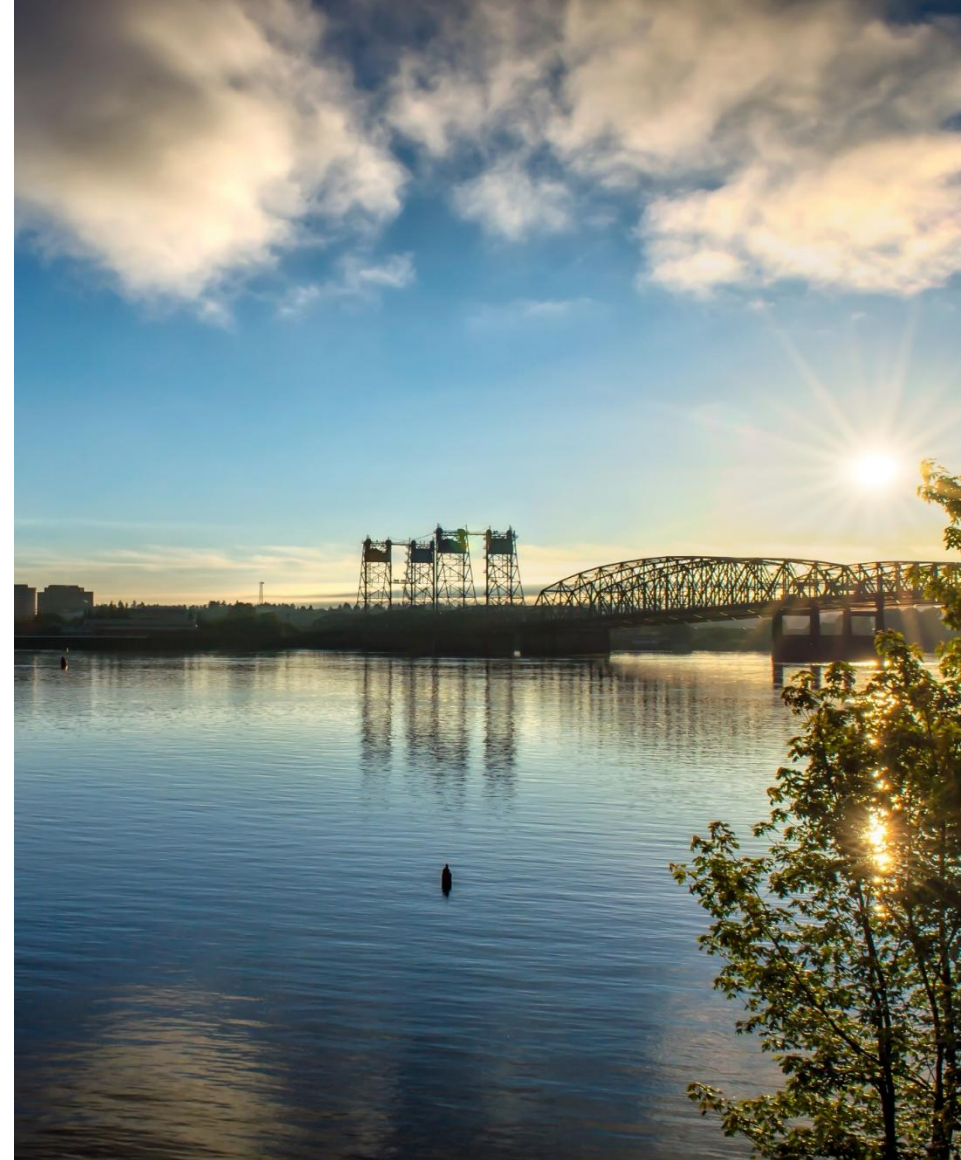
Political Context

- Currently, House Democrats hold a 59-40 seat majority and Senate Democrats hold a 29-20 seat majority
- November elections unlikely to impact political context
- Lack of alignment between Executive and Legislative branches
- Unresolved issues from last year return; such as housing policies

Transportation and Mobility

General Principles

- Sustain state transportation funding
- Support expansion of local authority
- Preserve investment in the Transportation Investment Board and Freight Mobility Strategic Investment Board



Economic Opportunity

Support a consistent regulatory environment, the expansion of workforce training, and increased support for education to produce the workforce of tomorrow



Housing and Human Needs

General Principles

- Reduce or remove barriers to increased and varied housing types
- Increase housing affordability
- Support SW WA low-income housing projects with state resources and tax credits
- Apply existing housing expectations to all UGAs



Vibrant and Distinct Neighborhoods

General Principles

- Allow for the continued development and preservation of the unique variety of places
- Maintain access to existing spaces and have the policy levers to activate new spaces to create places for the community to enjoy nature, art, culture, food, and shopping



Culture and Heritage

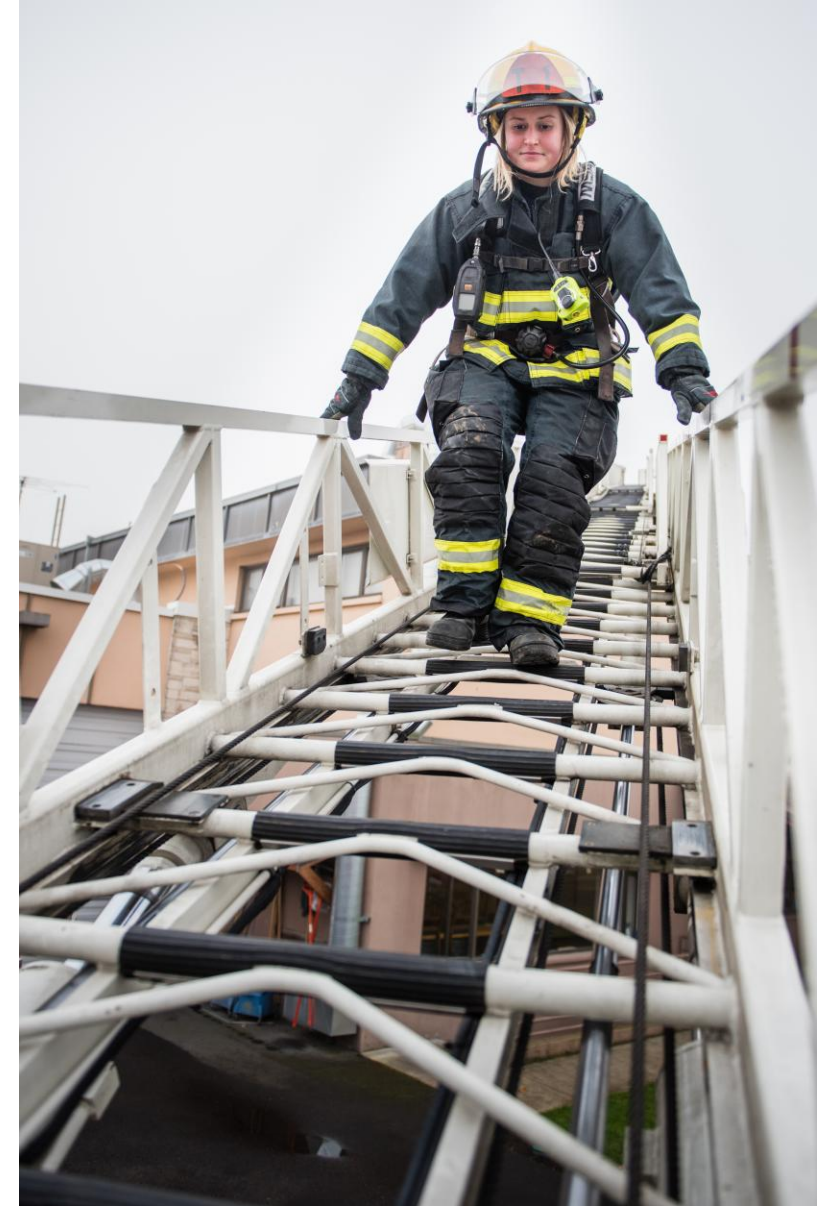
Expand opportunities for the community to learn about different cultures and experiences, through public events, museums, cultural centers, concerts and exhibits



Safe and Prepared Community

General Principles

- Advocate for continued state resources to support the goal of a community safe from violence and crime
- Plan for disaster and crisis
- Seek state partnership as we plan and prepare and prove ready to adapt to change



Climate and Natural Systems

General Principles

- Move both the public and private sectors towards lower carbon solutions and mitigate the impacts of climate change that our community is already experiencing



High Performing Government

General Principles

- Empower local government to address local issues with local solutions
- Providing localities with appropriate and effective revenue and regulatory tools to ensure the City has the resources needed to accomplish the work required of local government
- Fund work assigned by past and future state legislatures





Next Steps

- Secure agreement from Council on general principles
- Work with staff and city leadership to develop action items that support principles
- Present final legislative agenda to Council on December 8th for approval

Thank You



brian@arbutusllc.com | 360.489.8121



Staff Report: 196-25

To: Mayor and City Council
From: City Manager
Date: October 6, 2025

Subject

Construction Acceptance - Pearson Field Electrical Replacement Project - ITB 24-01

Key Points

- Approval will complete the Electrical Replacement Project at Pearson Field which enhances pilot safety and visibility measures by meeting FAA lighting standards.
- The Project delivers energy and maintenance cost savings through longer-life & more efficient fixtures.
- The Project advances the City's sustainability goals by reducing power consumption.

Strategic Plan Alignment

Transportation and Mobility – a safe, future-ready and convenient transportation system

Safe and Prepared Community – a safe place to live, work, learn and play

Present Situation

The original construction bid amount was \$648,939.00. The final construction contract costs were \$729,621.83. The \$44,682.83 cost increase (12.4%) was due to delays associated with the discovery of unexploded ordnance (UXO) found within the project limits. Additional time and cost were needed to coordinate with the proper authorities and safely remove the UXOs.

Advantage(s)

The installation of new runway lights not only fulfills the City's contractual and statutory obligations, but also enhances visibility and safety for the pilot community—supporting equitable access to aviation, reinforcing climate-resilient infrastructure, and strengthening stewardship of a vital public asset.

Challenge(s)

As discussed above, discovery of the UXOs caused a slight project delay and additional costs to safely remove the UXOs from the project limits.

Budget Impact

Sufficient budget has been included in each of the 2025-26 capital budgets for the Airport with project number PRJ100702.

Prior Council Review

Staff Report 124-24, award of bid for Pearson Airfield Lighting Replacement Project, project on August 5, 2024.

Action Requested

On Monday, October 6, 2025, accept the Pearson Field Electrical Replacement Project as constructed by Northeast Electric, LLC of Woodland, Washington, and authorize release of the bond, subject to receipt of all documentation required by law.

Staff Contact

Meredith Fox, Airport Manager, meredith.fox@cityofvancouver.us

Attachments:

None

Staff Report: 197-25

To: Mayor and City Council
From: City Manager
Date: October 6, 2025

Subject

Construction Acceptance - Esther Short Bell Tower and Pumphouse Repairs Projects - ITB #24-31

Key Points

- The Bell Tower-Pumphouse project has been completed. The bid was awarded in November 2024 and the system has been back in operation since May of 2025.
- Finalizing the construction contract releases retainage for work performed to LEE Contractors, LLC.

Strategic Plan Alignment

Safe and Prepared Community – a safe place to live, work, learn and play

Culture and Heritage – celebrating culture and heritage

Present Situation

LEE Contractors, LLC completed the repairs to the bell tower and pumphouse in 2025. This was a necessary repair to restore the structures and fountain system to functional and safe operations. The fountain system has been in operation over the summer for public use.

The work was completed satisfactorily in accordance with the plans and specifications. Contract costs are summarized below:

Total Contract Costs	
Labor, Equipment, and Material	\$1,740,961.24
Sales Tax	\$151,493.76
Total	\$1,892,455.00
Retainage	\$87,048.06

LEE Contractors, LLC exceeded the 5% Apprenticeship Utilization Goal for this project by using 320 apprentice hours out of the total 6,661 project hours.

Advantage(s)

- The repairs to the bell tower and pumphouse allow for a return-to-service of the structure and fountain system, providing durable and safe performance for long-term public enjoyment.
- Formal project acceptance completes the City's obligation in the contract for the Bell Tower

and Pumphouse repair project with LEE Contractors, LLC.

Challenge(s)

None

Budget Impact

Funds for this project were budgeted in the 2023-2024 and 2025-2026 Capital Biennial Budgets.

Prior Council Review

The construction bid was awarded at the June 17, 2024 council meeting.

Action Requested

On October 6, 2025, accept the facilities as constructed by LEE Contractors, LLC, and authorize release of the contractor's retainage, subject to receipt of all documentation required by law.

Staff Contact

Jean Singer, Capital Projects Manager, jean.singer@cityofvancouver.us

Attachments:

None

Staff Report: 198-25

To: Mayor and City Council
From: City Manager
Date: October 6, 2025

Subject

Construction Acceptance - Vancouver Fire Department Fire Station 5 Logistics Warehouse Project - ITB #24-45

Key Points

- The Logistics Warehouse at Fire Station 5 has been completed. The bid was awarded in November 2024 and the facility has been in operation since May of 2025.
- Finalizing the construction contract releases retainage for work performed to Construction Services Group, Inc.

Strategic Plan Alignment

Safe and Prepared Community – a safe place to live, work, learn and play

Present Situation

Construction Services Group, Inc. completed the construction of Fire Station 5's Logistics Warehouse in 2025. This is part of the City's overall initiative to improve existing fire facilities. The building has been in use for several months and has successfully supported fire department operations.

The work was completed satisfactorily in accordance with the plans and specifications. Contract costs are summarized below:

Total Contract Costs	
Labor, Equipment, and Material	\$1,049,585.04
Sales Tax	\$91,356.95
Total	\$1,140,941.99
Retainage	\$52,479.25

Construction Services Group, Inc. exceeded the 15% Apprenticeship Utilization Goal for this project by using 576.02 apprentice hours out of the total 3,128.20 project hours.

Advantage(s)

- The new enclosed fire station warehouse provides protection for critical supplies and improved inventory management, resulting in better services for the community.
- The improved resource at the central location at Fire Station 5 will support the City's growth.
- Formal project acceptance completes the City's obligation in the contract for Fire Station 5's

Challenge(s)

None

Budget Impact

Funds for this project were partially budgeted in the 2023-2024 and 2025-2026 Capital Biennial Budgets. The remaining funds were contributed by the Washington State Department of Commerce grant through the 2024 Local and Community Projects Program.

Prior Council Review

The construction bid was awarded at the November 4, 2024 council meeting.

Action Requested

On October 6, 2025, accept the facilities as constructed by Construction Services Group, Inc., and authorize release of the contractor's retainage, subject to receipt of all documentation required by law.

Staff Contact

Jean Singer, Capital Projects Manager, jean.singer@cityofvancouver.us

Attachments:

None

Staff Report: 199-25

To: Mayor and City Council
From: City Manager
Date: October 6, 2025

Subject

Contract Amendment — Annual Generator Maintenance & Repair- C-101813

Key Points

- Extends the current contract with Power Systems West by one year from 1/26/2026 to 1/25/2027.
- Increases the authorized amount of the contract by \$125,000 to a revised authorized amount of \$575,000.
- Allows for continued maintenance and repair for 54 City generators.

Strategic Plan Alignment

High Performing Government – a government that is reliable, fiscally responsible, equitable, and open to compromise.

Present Situation

The current City contract for this service was executed on January 1, 2022, as a one-year contract with the option to extend up to four additional years. An amendment was approved by Council on February 26, 2024, to increase spending authority to \$450,000. Increased spending capacity is being requested due to unexpected generator repairs needed in 2025. The contract allows the City to maintain its life-safety generators at City buildings, including critical facilities, such as fire and police stations and water distribution facilities. If approved, this would be the final option year under the original contract.

Advantage(s)

By approving this maintenance contract, the City would be able to maintain life-safety systems and critical infrastructure and have stable, predictable costs through January 25, 2027.

Challenge(s)

None

Budget Impact

The Fiscal Year 2025-2026 Budget includes funds budgeted to support this spending authority. The repair portion of the contract will be used on an as-needed basis. No additional budget impact.

Prior Council Review

Contract Amendment #3, increasing the spending authority from \$300,000 to \$450,000, was approved by council on February 26, 2024.

Action Requested

On Monday, October 6, 2025, authorize the City Manager, or designee, to finalize and execute Amendment #5 to contract C-101813 with Power Systems West, up to a maximum of \$575,000, and modifying the term through January 25, 2027.

Staff Contact

Brian Taylor, Operations Superintendent, brian.taylor@cityofvancouver.us

Attachments:

1. C-101813 Amendment No 5
2. C-101813 Amendment No. 4
3. C-100793 Amendment No. 3
4. C-100793 Amendment No. 2
5. C-100793
6. 2024 Staff Report - 040-24



CONTRACT #C-101813
AMENDMENT No. 5
Annual Generator Maintenance & Repair

This Amendment amends the Services Agreement number C-101813 by and between the City of Vancouver, and EC Company dba Power Systems West LLC., whose address is 1835 NW 21st Avenue, Portland, OR 97217 for services offered.

This amendment amends the original agreement as follows:

1. Extends the Contact one year from 1/26/2026 to 1/25/2027
2. Increases the authorized amount of the Contract by \$450,000 to a revised authorized amount of \$575,000.
3. Washington State Sales Tax is updated to 8.8%.

This amendment in no way alters any other provisions of the original agreement.

CITY OF VANCOUVER
A municipal corporation

CONTRACTOR:
Power Systems West LLC.

Lon Pluckhahn, City Manager

Signature

Date

Printed Name /Title

Attest:

Date

Natasha Ramras, City Clerk

Approved as to form:

Nena Cook, City Attorney



CONTRACT #C-101813
AMENDMENT No. 4
Annual Generator Maintenance & Repair

This Amendment amends the Services Agreement number C-101813 by and between the City of Vancouver, hereinafter referred to as "City", and EC Company dba Power Systems West LLC., hereinafter referred to as "Contractor", whose address is 1835 NW 21st Avenue, Portland, OR 97217 for services offered.

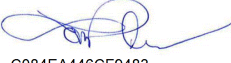
This amendment amends the original agreement as follows:

1. Extends the Contact one (1) year from 1/26/2025 to 1/25/2026
2. **Amend** the language in Section 1, Statement of Work, with language in herein attached and by reference made part of the Contract, Attachment A.
 - Updating service rates effective January 26, 2025.

This amendment in no way alters any other provisions of the original agreement.

CITY OF VANCOUVER
 A municipal corporation

CONTRACTOR:
 Power Systems West LLC.

Signed by:


C084EA446CF0483...
 Lon Pluckhahn, City Manager

1/10/2025

Date

Signed by:


B60BDB1ABD934CC...
 Signature

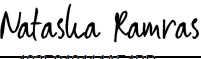
Carlos Ventura service manager

Printed Name /Title

1/3/2025

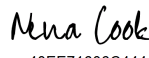
Date

Attest:

DocuSigned by:


493F920414AE4BD...
 Natasha Ramras, City Clerk

Approved as to form:

DocuSigned by:


40EE71000C4444D...
 Nena Cook, Deputy Assistant City Attorney

ITEM	QUANTITY	UNIT	UNIT PRICE	CURRENT AMOUNT	3%
Annual Load Bank Testing & Engine Servicing - Water Station 9 Well – 14704 NE 39th Street Vancouver, WA 98682	1	LS	\$ 1,415.18	\$ 1,415.18	\$ 1,457.64
Annual Load Bank Testing & Engine Servicing - Water Station 9 Booster – 14704 NE 39th Street Vancouver, WA 98682	1	LS	\$ 1,415.18	\$ 1,415.18	\$ 1,457.64
Annual Load Bank Testing & Engine Servicing - Terrace Booster Station – 19210 SE 31st Street Camas, WA 98607	1	LS	\$ 1,049.97	\$ 1,049.97	\$ 1,081.47
Annual Load Bank Testing & Engine Servicing - Ellsworth Pump Station – 9319 SE 16th Street Vancouver, WA 98664	1	LS	\$ 7,013.12	\$ 7,013.12	\$ 7,223.51
Annual Load Bank Testing & Engine Servicing - Water Station 14 Booster – 6803 NE 78th Street Vancouver, WA 98665	1	LS	\$ 1,306.76	\$ 1,306.76	\$ 1,345.96
Annual Load Bank Testing & Engine Servicing - Op's Center Main Building – 4711 E Fourth Plain Blvd Vancouver, WA 98661	1	LS	\$ 1,021.44	\$ 1,021.44	\$ 1,052.08
Annual Load Bank Testing & Engine Servicing - Brookside NE Dock - 4711 E Fourth Plain Blvd Vancouver, WA 98661	1	LS	\$ 913.02	\$ 913.02	\$ 940.41
Annual Load Bank Testing & Engine Servicing - Water Station 1 – 2103 E Reserve Street Vancouver, WA 98661	1	LS	\$ 9,980.43	\$ 9,980.43	\$ 10,279.84
Annual Load Bank Testing & Engine Servicing - Police Administration HQ - 605 E. Evergreen Blvd.	1	LS	\$ 907.32	\$ 907.32	\$ 934.54
Annual Load Bank Testing & Engine Servicing - Firstenburg Comm Ctr. - 700 NE 136th Ave.	1	LS	\$ 907.32	\$ 907.32	\$ 934.54
Annual Load Bank Testing & Engine Servicing - Firstenburg - Fire Pump - 700 NE 136th Ave	1	LS	\$ 1,112.75	\$ 1,112.75	\$ 1,146.13
Annual Load Bank Testing & Engine Servicing - Police - East Precinct - 520 SE 155th Ave.	1	LS	\$ 1,249.70	\$ 1,249.70	\$ 1,287.19
Annual Load Bank Testing & Engine Servicing - Marshall Center - 1009 E McLoughlin Blvd Bldg A	1	LS	\$ 1,306.76	\$ 1,306.76	\$ 1,345.96
Annual Load Bank Testing & Engine Servicing - Luepke Center - 1009 E McLoughlin Blvd Bldg B	1	LS	\$ 1,078.51	\$ 1,078.51	\$ 1,110.87
Annual Load Bank Testing & Engine Servicing - Police - Evidence Storage - 2325 W Mill Plain Blvd.	1	LS	\$ 907.32	\$ 907.32	\$ 934.54
Annual Load Bank Testing & Engine Servicing - Police - West Precinct - 2800 NE Stapleton Rd.	1	LS	\$ 1,249.70	\$ 1,249.70	\$ 1,287.19
Annual Load Bank Testing & Engine Servicing - City Hall - 415 W. 6th St. Generator #1 600 KW	1	LS	\$ 1,249.70	\$ 1,249.70	\$ 1,287.19
Annual Load Bank Testing & Engine Servicing - City Hall - 415 W. 6th St. Generator #2 250 KW	1	LS	\$ 1,415.18	\$ 1,415.18	\$ 1,457.64
Annual Load Bank Testing & Engine Servicing - Fire Station 1 - 2607 Main St	1	LS	\$ 1,049.97	\$ 1,049.97	\$ 1,081.47
Annual Load Bank Testing & Engine Servicing - Fire Station 2 - 2601 Norris Rd	1	LS	\$ 1,049.97	\$ 1,049.97	\$ 1,081.47
Annual Load Bank Testing & Engine Servicing - Fire Station 3 - 1110 N. Devine Rd.	1	LS	\$ 850.25	\$ 850.25	\$ 875.76
Annual Load Bank Testing & Engine Servicing - Fire Station 4 - 6701 NE 147th Ave.	1	LS	\$ 1,078.51	\$ 1,078.51	\$ 1,110.87
Annual Load Bank Testing & Engine Servicing - Fire Station 5 - 7110 NE 63rd St.	1	LS	\$ 1,249.70	\$ 1,249.70	\$ 1,287.19
Annual Load Bank Testing & Engine Servicing - Fire Station 6 - 3216 NE 112th Ave.	1	LS	\$ 1,021.44	\$ 1,021.44	\$ 1,052.08
Annual Load Bank Testing & Engine Servicing - Fire Station 7 - 12603 NE 72nd Ave.	1	LS	\$ 1,072.80	\$ 1,072.80	\$ 1,104.98
Annual Load Bank Testing & Engine Servicing - Fire Station 8 - 213 NE 120th Ave.	1	LS	\$ 1,049.97	\$ 1,049.97	\$ 1,081.47
Annual Load Bank Testing & Engine Servicing - Fire Station 9 - 17408 SE 15th St.	1	LS	\$ 1,078.51	\$ 1,078.51	\$ 1,110.87
Annual Load Bank Testing & Engine Servicing - Fire Station 10 - 1501 NE 164th Ave.	1	LS	\$ 1,078.51	\$ 1,078.51	\$ 1,110.87
Annual Load Bank Testing & Engine Servicing - Fire Station 11 - 9600 NE 130th Ave.	1	LS	\$ 1,078.51	\$ 1,078.51	\$ 1,110.87
Annual Load Bank Testing & Engine Servicing - 87th Sewer Station	1	LS	\$ 878.78	\$ 878.78	\$ 905.14
Annual Load Bank Testing & Engine Servicing - Pinebrook Sewer Station	1	LS	\$ 907.32	\$ 907.32	\$ 934.54
Annual Load Bank Testing & Engine Servicing - Grand Central Sewer Station	1	LS	\$ 907.32	\$ 907.32	\$ 934.54
Annual Load Bank Testing & Engine Servicing - Columbia Shores Sewer Station	1	LS	\$ 878.78	\$ 878.78	\$ 905.14
Annual Load Bank Testing & Engine Servicing - Water front Sewer Station	1	LS	\$ 1,021.44	\$ 1,021.44	\$ 1,052.08
Annual Load Bank Testing & Engine Servicing - Port Centennial Sewer Station	1	LS	\$ 907.32	\$ 907.32	\$ 934.54
Annual Load Bank Testing & Engine Servicing - 63rd St Sewer Station	1	LS	\$ 1,021.44	\$ 1,021.44	\$ 1,052.08
Annual Load Bank Testing & Engine Servicing - Columbia Tech Sewer Station	1	LS	\$ 1,078.51	\$ 1,078.51	\$ 1,110.87
Annual Load Bank Testing & Engine Servicing - Westridge Sewer Station	1	LS	\$ 1,049.97	\$ 1,049.97	\$ 1,081.47
Annual Load Bank Testing & Engine Servicing - Fishers Grove Sewer Station	1	LS	\$ 1,049.97	\$ 1,049.97	\$ 1,081.47
Annual Load Bank Testing & Engine Servicing - Columbia Palasades Sewer Station	1	LS	\$ 1,049.97	\$ 1,049.97	\$ 1,081.47
Annual Load Bank Testing & Engine Servicing - Mill Plain One Sewer Station	1	LS	\$ 907.32	\$ 907.32	\$ 934.43
Annual Load Bank Testing & Engine Servicing - Twin Peaks Sewer Station	1	LS	\$ 907.32	\$ 907.32	\$ 934.54
Annual Load Bank Testing & Engine Servicing - Stein Estates Sewer Station	1	LS	\$ 907.32	\$ 907.32	\$ 934.54
Annual Load Bank Testing & Engine Servicing - Edmond Estates Sewer Station	1	LS	\$ 907.32	\$ 907.32	\$ 934.54
Annual Load Bank Testing & Engine Servicing - Rosewood Sewer Station	1	LS	\$ 964.38	\$ 964.38	\$ 993.31
Annual Load Bank Testing & Engine Servicing - LaCamas Prairie Sewer Station	1	LS	\$ 1,049.97	\$ 1,049.97	\$ 1,081.47
Annual Load Bank Testing Only - Trailer Generator #5024	1	LS	\$ 1,266.81	\$ 1,266.81	\$ 1,304.81
Annual Load Bank Testing Only - Trailer Generator #5028	1	LS	\$ 1,266.81	\$ 1,266.81	\$ 1,304.81
Annual Load Bank Testing Only - Trailer Generator #5008	1	LS	\$ 1,266.81	\$ 1,266.81	\$ 1,304.81
Annual Load Bank Testing Only - Trailer Generator #5023	1	LS	\$ 1,266.81	\$ 1,266.81	\$ 1,304.81
Annual Load Bank Testing Only - Trailer Generator #5026	1	LS	\$ 1,266.81	\$ 1,266.81	\$ 1,304.81
Annual Load Bank Testing Only - Trailer Generator #5031	1	LS	\$ 1,266.81	\$ 1,266.81	\$ 1,304.81
Labor Service Mark up for added work	%		N/A	N/A	N/A
Material Mark Up for added work	%		N/A	N/A	N/A

CONSTRUCTION CONTRACT # C-100793

AMENDMENT No. 3

ITB 21-34: Annual Generator Maintenance & Repair

This Agreement amends the Construction Contract number C-100793 by and between the City of Vancouver, hereinafter referred to as "City", and EC Company dba Power Systems West hereinafter referred to as "Contractor", whose address is 6110 N Cutter Circle, Portland, OR 97217 for services offered.

This amendment amends the original Contract as follows:

1. Increase the authorized amount of the Contract by \$150,000 to a revised authorized amount of \$450,000.
2. Ratification: Acts taken pursuant to this Amendment but prior to its effective date are hereby ratified and confirmed.

This amendment in no way alters any other provisions of the original agreement.

CITY OF VANCOUVER

A municipal corporation

DocuSigned by:


75A9183485CA407...
Eric Holmes, City Manager

3/1/2024

Date

Attest:

DocuSigned by:


BCE6734E40E94AE...
Natasha Ramras, City Clerk

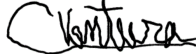
Approved as to form:

DocuSigned by:


9A7DC2E31F694A2...
Jonathan Young, City Attorney

CONTRACTOR:

Power Systems West

DocuSigned by:


866BDB1ABD934CC...
Signature

Carlos Ventura

Service manager

Printed Name /Title

2/27/2024

Date

SERVICE AGREEMENT #C-100793

AMENDMENT NO. 2

Annual Generator Maintenance & Repair

This Agreement amends the Service Agreement number C-100793 by and between the City of Vancouver, hereinafter referred to as "City", and EC Company dba Power Systems West hereinafter referred to as "Contractor", whose address is 6110 N Cutter Cir, Portland, OR 97217.

This amendment modifies the Annual Generator Maintenance & Repair C-100793 as follows:

- 1. Extends the Contract one (1) year from 1/27/2024 to 1/26/2025.
- 2. Ratification: Acts taken pursuant to this Amendment but prior to its effective date are hereby ratified and confirmed.

CITY OF VANCOUVER

A municipal corporation

DocuSigned by:

7C05B7FF675849B...
Anna Vogel, Procurement Manager

1/26/2024
Date

Attest:

DocuSigned by:

BCF6734E40E94AE...
Natasha Ramras, City Clerk

Approved as to form:

DocuSigned by:

E1935B9517E94D2...
Tricia Juettemeyer, Assistant City Attorney

CONTRACTOR:

EC Company dba Power Systems West

DocuSigned by:

B60BDB1ABD934CC...
Signature

carlos ventura service manager
Printed Name /Title

1/26/2024
Date



CONTRACT # C-100793
ITB 21-34: Annual Generator Maintenance & Repair

THIS CONTRACT is entered into by and between the City of Vancouver, a municipal corporation under the laws of the State of Washington, hereinafter referred to as "City," and EC Company dba Power Systems West hereinafter referred to as "Contractor," whose address is 6110 N Cutter Circle, Portland, OR 97217, hereinafter referred to "Parties."

WHEREAS, the City desires to engage the Contractor to provide public work and other related services for Annual Generator Maintenance & Repair. Contractor has agreed to offer its services to perform said work per the City issued Invitation to Bid (ITB) No. 21-34 and all addenda thereto, Contractor's bid to said ITB, the Project Plans and Special Provisions.

WHEREAS, the Contractor has represented by entering into this Contract that it is fully qualified to perform the work to which it will be assigned in a competent and professional manner, and to the standards required by the City.

1. **STATEMENT OF WORK:** The Contractor hereby agrees to furnish all materials, labor, tools, machinery and implements of every description necessary to complete the work in a professional manner within the time limits stated in this Contract for the construction and installation of the following improvements and will make all necessary arrangements for the obtaining of permits from the United States, State of Washington, and/or any of its agencies as may be necessary to do the work required and covered by this Contract.

This contract provides for the annual maintenance, load bank testing, service and repair of City owned generators and other work, all in accordance with the attached Contract Plans, these Contract Provisions, and the Standard Specifications, hereafter referred to as "Work."

The City intends to award this Contract for an initial period of one (1) year with the option to extend up to four (4) additional years. If extended, Prevailing Wage rates must be updated annually. Yearly labor and material cost adjustments may be made accordingly at the discretion of the City. Cost adjustments shall be in accordance to the Consumer Price Index for the Seattle-Tacoma-Bellevue area. Contractor shall submit request for cost adjustments at least thirty (30) days prior to Contract renewal.

2. **EFFECTIVE DATE:** This Contract is effective as of the last signature dated below.
3. **E-VERIFY PROGRAM:** Contractor shall register and enter into a Memorandum of Understanding (MOU) with the Department of Homeland Security E-Verify program within sixty (60) days after execution of this Agreement. Contractor shall ensure all Contractor employees and any sub-contractor(s) assigned to perform work under this Agreement are eligible to work in the United States. Contractor shall provide verification of compliance upon City request. Failure by Contractor to comply with this subsection shall be considered a material breach.

- 4. CONTRACTOR RESPONSIBILITIES FOR SUBCONTRACTORS:** The Contractor shall include the language of this section in all tier subcontracts, and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. The requirements of this section apply to all subcontractors regardless of tier. The Contractor shall require all subcontractors to comply with all relevant federal, state and municipal laws, rules and regulations whatsoever.

At the time of subcontract execution, the Contractor shall verify that all tier subcontractors meet the following bidder 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. Have received training on the requirements related to public works and prevailing wage as required by RCW 39.04.350;
 4. Within the three-year period immediately preceding the date of the bid solicitation, not have been 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 to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW.
 5. If applicable, have:
 - i. Have Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW;
 - ii. A Washington Employment Security Department reference number, as required in Title 50 RCW;
 - iii. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
 - iv. An electrical contractor license, if required by Chapter 19.28 RCW;
 - v. An elevator contractor license, if required by Chapter 70.87 RCW.
 6. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).
- 5. DELINQUENT STATE TAXES:** The Contractor shall not owe delinquent taxes to the Washington State Department of Revenue without a payment plan approved by the Department of Revenue.
- 6. COMPENSATION AND SCHEDULE OF PAYMENTS:** In consideration of the promises and agreements of the Contractor as set forth herein, and in consideration of the faithful performance and furnishing of the work and materials required by this Contract to the satisfaction of the City, the City agrees to pay to the Contractor in the manner and at the times provided hereinafter and in the Contract Documents, and in accordance with the ordinances of the City of Vancouver and the laws of the State of Washington, the following sum as indicated, which amount does includes 8.5% Washington State Sales Tax (if applicable) \$300,000.00.

The amount finally to be paid is, however, variable upon the work actually performed and final payment will be made upon the basis of the amount of work performed and the materials furnished, and at the lump sum or unit prices fixed in the Contractor's Proposal and as modified by any and all approved Change Orders.

- 7. CONTRACTOR'S INSURANCE:** The Contractor agrees to procure insurance coverage as required below:

COVERAGE	LIMITS OF LIABILITY
I. Commercial General Liability:	
Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability	
Each Occurrence	\$1,000,000
General Aggregate Per Occurrence	\$2,000,000
Products & Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Blanket Contractual Liability	\$1,000,000
II. Commercial Automobile Liability	
Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or Non-owned vehicles used in the operation, installation and maintenance of facilities under this agreement.	
Combined Single Limit	\$1,000,000
III. Workers' Compensation (applicable to the State of Washington)	
Per Occurrence	Statutory
Employer's Liability	\$1,000,000
Disease Each Employee	\$1,000,000
Disease Policy Limit	\$1,000,000
Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

- 8. CONTRACTOR'S BOND:** The Contractor agrees that before it undertakes performance of any individual project greater than \$35,000, it will file with the City of Vancouver a Performance Bond and Payment Bond, in the forms prescribed by the City of Vancouver, in the full amount of the Contract price with a company authorized to do business in the State of Washington as a surety. The bonds shall comply with the laws of the State of Washington, and especially with the provisions of Chapter 39.08 RCW.
- 9. DISPUTE RESOLUTION:** In the event of a dispute between the Parties which cannot be resolved by the contract managers, the Contractor and the City shall review such dispute and may attempt to resolve the dispute. Any controversy or claim arising out of or relating to this Contract or the alleged breach of this Contract that cannot be resolved by the Parties within 30 days of receipt of written notice may be submitted to mediation. If the dispute is not resolved through mediation, it shall be submitted to binding arbitration in accordance with the rules and procedures set forth in Chapter 7.04A RCW. The Parties agree to pay their own attorneys' fees and expenses.
- 10. EMPLOYMENT OF LABOR:** The Contractor agrees that all persons employed by Contractor and by any of its subcontractors and any of their lower tier contractors in work performed pursuant to this Contract shall not be employed in excess of eight (8) hours in any one day, except as provided or allowed by Chapter 49.28 RCW and WAC 296-127 and any amendment thereto.
- 11. PAYMENT OF LABOR:** The Contractor agrees that all laborers, workers, or mechanics employed by it or by any subcontractor in the performance of this Contract will be paid not less than the prevailing rate of wage for an hours work, in accordance with the provisions of the Chapter 39.12 RCW, and all rules and regulations promulgated pursuant thereto. The State of Washington

prevailing wage rates applicable for this public works project, which is located in Clark County, may be found at the following website address of the Department of Labor and Industries: <https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>. The prevailing wage rates in effect at the time of the bid submittal deadline shall apply for the duration of the contract year. However, if the Contract is awarded more than six months after the bids were due, the prevailing wage rates in effect on the award date shall apply. An approved "Affidavit of Wages Paid" form must be filed at the end of each contract year. If the contract is extended, a "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" form will be required to be filed for each contract year. This Contract shall have prevailing wage rates updated annually; yearly cost adjustments may be made accordingly at the discretion of the City. Contractor shall submit request for cost adjustments at least thirty (30) days prior to the end of the Contract year.

In case any dispute arises as to what the prevailing rates of wages for work of a similar nature are and such dispute cannot be adjusted by the parties involved, the matter shall be referred to the director of the Department of Labor and Industries of the State of Washington for arbitration, and the director's decision shall be final, conclusive and binding on all parties involved in the dispute.

- 12. PAYMENT TO THE CONTRACTOR:** Progress payments to the Contractor shall be made within 30 days of a fully executed Pay Estimate and are in compliance with all contractual requirements. A sum equal to 5% may be reserved and retained from monies earned by the Contractor in accordance with Chapter 60.28 RCW for projects greater than \$35,000. The City reserves the right to require Contractor to correct any submitted or paid erroneous invoices according to the rates set forth herein. City and Contractor agree that any amount paid in error by City does not constitute a change in the agreed upon amount; Contractor agrees to issue a refund of any overages paid in error by the City.

Release of the retained percentage or the retainage bond shall be in accordance with Chapter 60.28 RCW. Every person performing labor or furnishing supplies toward the completion of said improvement of work shall have a lien upon said monies so reserved; provided, that such notice of the lien of such claimant shall be given in the manner provided in RCW 39.08.030 and within the time provided in Chapter 60.28 RCW as now existing and in accordance with any amendments that may hereafter be made thereto.

No payment shall be made to the Contractor, however, until the Contractor and all subcontractors who have performed work shall have filed and received approval of a Statement of Intent to Pay Prevailing Wage as required by RCW 39.12.040 from the Washington State Department of Labor and Industries. Said Contractor and all subcontractors shall also keep accurate payroll records for three years from the date of acceptance as described in RCW 39.12.120. A Contractor and all subcontractors shall, file a copy of its certified payroll records using the Department of Labor and Industries online system on a monthly basis. A Contractor's noncompliance with this section shall constitute a violation of RCW 39.12.050.

- 13. INDEMNIFICATION:** Contractor agrees to indemnify, defend, save and hold harmless the City, its officials, employees and agents from any and all liability, including but not limited to demands, claims, causes of action, suits or judgments, claims of copyright or patent infringement, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, the performance of services by Contractor pursuant to this Contract.

In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against the Contractor, the City retains the right to participate in said suit.

This indemnity and hold harmless shall include any claim made against the City by an employee of Contractor or subcontractor or agent of the Contractor, even if Contractor is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW. To the extent that such liability arises from the concurrent negligence of both the City and the Contractor, such cost, fees and expenses shall be shared between the City and the Contractor in proportion to their relative degrees of negligence. This indemnity and hold harmless shall NOT apply in the case where liability arises from the sole negligence of the City. Contractor specifically acknowledges that the provisions contained herein have been mutually negotiated by the Parties and it is the intent of the Parties that Contractor provide the broadest scope of indemnity permitted by RCW 4.24.115.

- 14. OWNERSHIP OF RECORDS AND DOCUMENTS:** Any and all work product prepared by the Contractor in the course of performing this Contract shall immediately become the property of the City. In consideration of the compensation provided for by this Contract, the Contractor hereby further assigns all copyright interests in such work product to the City. A copy may be retained by the Contractor. Previously owned intellectual property of Contractor or any third party, and any know-how, methodologies or processes used by Contractor to provide the services or project deliverables under this Contract shall remain property of the original City.
- 15. PUBLIC DISCLOSURE COMPLIANCE:** The parties acknowledge that the City is an "agency" within the meaning of the Washington Public Records Act, Chapter 42.56 RCW, and that materials submitted by the Contractor to the City become public record. Such records may be subject to public disclosure, in whole or part and may be required to be released by the City in the event of a request for disclosure. In the event the City receives a public record request for any data or deliverable that is provided to the City and that is licensed from the Contractor, the City shall notify the Contractor of such request and withhold disclosure of such information for not less than five (5) business days, to permit the Contractor to seek judicial protection of such information, provided that the Contractor shall be responsible for attorney fees and costs in such action and shall save and hold harmless the City from any costs, attorney fees or penalty assessment under Chapter 42.17 RCW for withholding or delaying public disclosure of such information.
- 16. AMENDMENTS:** All changes to this Contract, including changes to the statement of work and compensation, must be made by written Change Order and/or Amendment and signed by all parties to this Contract.
- 17. AUTHORIZATION AND COMPLIANCE WITH THE LAW:** The Contractor certifies that the person signing the Contract is legally authorized to enter into this binding Contract and that the Contractor shall fully comply with all relevant, federal, state and municipal laws, rules, regulations and policies.
- 18. RELATION OF PARTIES:** The Contractor, its subcontractors, agents and employees are independent contractors performing services for The City and are not employees of City; shall not, as a result of this Contract, accrue leave, retirement, insurance, bonding or any other benefits

afforded to City employees; and, shall not have the authority to bind the City in any way except as may be specifically provided in the Statement of Work.

19. JURISDICTION/VENUE: In the event that any litigation should arise concerning the construction or interpretation of the terms and/or conditions of this Contract, the venue of such action of litigation shall be in the Superior Court of the State of Washington in and for the County of Clark. This Contract shall be governed by the law of the State of Washington.

20. COOPERATIVE PURCHASING: The Washington State Inter-local Cooperation Act, Chapter 39.34 RCW, authorizes public agencies to cooperatively purchase goods and services if all parties agree. By having executed this Contract, the Contractor agrees that other public agencies may purchase goods and services under this solicitation or contract at their own cost and without the City of Vancouver incurring any financial or legal liability for such purchases. The City of Vancouver agrees to allow other public agencies to purchase goods and services under this solicitation or contract, provided that the City of Vancouver is not held financially or legally liable for purchases and that any public agency purchasing under such solicitation or contract file a copy of this invitation and such contract in accordance with RCW 39.34.040.

21. ASSIGNMENT: This Contract is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstances, be assigned or transferred by either party without the other party's express written authorization.

22. TERMINATION FOR CONVENIENCE: The City, at its sole discretion, may terminate this Contract for convenience at any time for any reason deemed appropriate. Termination is effective immediately upon notice of termination given by the City.

In the event this Contract is terminated prior to the completion of Work, Contractor will only be paid for the Work completed at the time of termination of the Contract.

23. TERMINATION FOR CAUSE: In the event the Contractor is, or has been, in violation of the terms of this Contract, including the solicitation, the City reserves the right, upon written notice to the Contractor, to cancel, terminate, or suspend this contract in whole or in part for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for services performed in accordance with the manner of performance set forth in the Contract.

If it is later determined by the City that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, or events which are not the fault of or are beyond the control of the Contractor, the City after setting up a new delivery or performance schedule, may allow the Contractor to continue work or treat the termination as a termination for convenience.

24. OPPORTUNITY TO CURE: The City at its sole discretion may in lieu of a termination allow the Contractor to cure the defect(s), by providing a "Notice to Cure" to Contractor setting forth the remedies sought by City and the deadline to accomplish the remedies. If the Contractor fails to remedy to the City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within the time stated time, the City shall have the right to terminate the Contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against

the Contractor and its sureties for said breach or default, including but not limited to termination of this Contract for convenience.

- 25. WAIVER AND REMEDIES:** City's failure to enforce the terms or conditions herein or to exercise any right or privilege, or the City's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type. Remedies under this Contract are cumulative; the use of one remedy shall not be taken to exclude or waive the right to use another.
- 26. ENTIRETY OF CONTRACT:** This Contract incorporates all the agreements, covenants and understanding between the parties hereto and are merged into this written Contract. No prior agreement or prior understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless set forth in this Contract.
- 27. USE OF CITY'S NAME:** Contractor may not use any of City's name, trademark, service marks, or logo in connection with the services contemplated by this Contract or otherwise without the prior written permission of City, which permission may be withheld for any or no reason and may be subject to certain conditions.
- 28. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY:** During the term of this Contract, Contractor will not discriminate against any employee or applicant for employment in accordance with RCW Chapter 49.60, including, but not limited to creed, religion, race, color, age, sex, marital status, sexual orientation, sexual identity, pregnancy, military status, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical disability, unless based upon a bona fide occupational qualification. The Contractor will take affirmative action to ensure that applicants and employees are treated fairly, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical disability. Such action shall include all terms and conditions of employment, compensation, and benefits, including apprenticeship.
- 29. BINDING EFFECT:** The provisions, covenants and conditions in this Contract bind the parties, their legal heirs, representatives, successors, and assigns.
- 30. RATIFICATION:** Acts taken pursuant to this Contract but prior to its effective date are hereby ratified and confirmed.
- 31. INCORPORATED CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE:** The complete Contract includes these parts listed in this section below, which are incorporated by this reference as if fully as set forth herein. Any inconsistency in the parts of the contract shall be resolved by following this order of precedence (e.g., 1 presiding over 2, 2 over 3, 3 over 4, and so forth):
1. Amendments to the Contract,
 2. This Contract,
 3. Addenda to the Solicitation,
 4. The Solicitation,
 5. Contractor's Proposal,
 6. Special Provisions,
 7. General Conditions for Facility Construction,
 8. City of Vancouver Standard Plans,
 9. WSDOT Amendments to the WSDOT Standard Specifications,

10. WSDOT Standard Specifications,
13. WSDOT Standard Plans.

32. NOTICES: Whenever in this written Contract written notices are to be given or made, they may be sent by certified mail to the following people at the addresses as shown herein unless a different address is designated in writing or delivered to the respective party hereto.

Anna Vogel
City of Vancouver
415 W 6th St.
PO Box 1995
Vancouver WA 98668-1995

Brad Lyons
Power Systems West
6110 N Cutter Circle
Portland, OR 97217

By signing below, Contractor accepts the terms and conditions of this Contract and specifically acknowledges and agrees that the provisions contained herein have been mutually negotiated by the Parties.

CITY OF VANCOUVER
A municipal corporation

DocuSigned by:



7C05B7FF075649B...
Anna L. Vogel, Procurement Manager

1/27/2022

Date

Attest:

DocuSigned by:



BCF6734E40E94AE...
Natasha Ramras, City Clerk

Approved as to form:

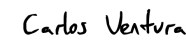
DocuSigned by:



201B196A339644B...
Taylor Hallvik for Jonathan Young, City Attorney

CONTRACTOR:
Power Systems West

DocuSigned by:



800BDB1ABD934CC...
Signature

Carlos Ventura

Service manager

Printed Name /Title

1/17/2022

Date

Staff Report: 040-24

TO: Mayor and City Council

FROM: Eric Holmes, City Manager

DATE: 2/26/2024

SUBJECT Generator Annual Maintenance and Repair ITB21-34 Increase

Key Points

An amendment to the current Contract with EC Company dba Power Systems West for Generator Maintenance & Repair Services is required to authorize additional funds to facilitate the continued maintenance and repairs needed on emergency generators at City owned buildings, fire stations, water stations and sewer pump station properties.

Strategic Plan Alignment

High Performing Government – a government that is reliable, fiscally responsible, equitable, and open to compromise.

Present Situation

1. On October 26, 2021, the City issued an invitation to bid, ITB21-34 Annual Generator Maintenance & Repair Service. On January 1, 2022, a one (1) year with a possible four (4) year extension Contract C-100793 was awarded to EC Company dba Power Systems West 6110 N Cutter Circle Portland, OR, 97217, with a “not to exceed” cost of \$300,000.
2. On January 24, 2023, and January 24, 2024, an amendment to extend the contract one (1) year was issued for each year, we are currently starting the third year of the contract.
3. Currently this contract covers 54 city generators for maintenance, which includes Facilities, Water and Sewer buildings.

Advantage(s)

This contract allows continued support for maintenance and repairs for the facilities team on an as-needed basis. The contract also maintains regulatory testing compliance for emergency generators on city properties.

Disadvantage(s)

None

Budget Impact

Funds for this contract are allocated through the General Services annual facilities budget.

Prior Council Review

None

Action Requested

Authorize the City Manager, or designee, to increase the total contract with EC Company dba Power Systems West to a “not to exceed” price of \$450,000.

Joseph Cathey, Facilities Contract Services Supervisor, 360-487-8386; Mike Shrum, Facilities Contract Services Supervisor, 360-487-8260

ATTACHMENTS:

- ▯ [Proposed Contract Amendment](#)

Staff Report: 200-25

To: Mayor and City Council
From: City Manager
Date: October 6, 2025

Subject

Contract Amendment — Moore Lacofano Goltsman Inc (MIG) for Bagley Park Phase 1 Development - C-101193

Key Points

- Bagley Community Park is a 16.19-acre park in the Bagley Downs Neighborhood that was originally developed in 1994.
- A master plan process to redevelop the park occurred in 2023 and 2024 with approval by the Parks and Recreation Commission on August 21, 2024.
- We are now at the stage of finalizing detailed design documents for phase 1 development, and this will require a contract amendment for consultant services.

Strategic Plan Alignment

Culture and Heritage – celebrating culture and heritage

Vibrant and Distinct Neighborhoods – a variety of accessible places and spaces

Climate and Natural Systems – environmental stewardship and efforts to address climate change to ensure a sustainable future

High Performing Government – a government that is reliable, fiscally responsible, equitable, and open to compromise

Present Situation

Bagley Community Park is within the Fourth Plain For All plan area, a multi-year City initiative to invest in this area. The redevelopment of the park is a key part of this effort and is supported by American Rescue Plan Act (ARPA) funds.

Current amenities offered at Bagley Community Park include three unused softball fields, full-court basketball, an extensive trail system, forested wetland area, a large deteriorating playground, restroom, picnic tables, and open lawn areas.

MIG was selected through a competitive Request For Qualifications (RFQ) process and the City issued a contract in the amount of \$440,040 in May 2023 for public outreach, master planning and special studies and issued an amendment for a graphic depicting first phase development for \$2,320 for a revised contract amount of \$442,360. The RFQ process for this project included the expectation that the contract scope would be expanded to complete phase 1 design after master planning was completed.

A core expectation of the master planning process was extensive community engagement. Work to

date has included a community survey, three open house events, numerous tabling efforts at community gatherings, direct outreach to community-focused organizations, and integration in the Fourth Plain For All effort. All materials were translated into multiple languages and posted on the project Be Heard site.

Throughout the master plan process, it was determined that the community envisions the park to be a colorful, lively space that reflects the diversity and vibrancy of cultures in this community. A place for people to have fun and feel a sense of belonging. Parks and natural areas should provide safe, welcoming spaces for families and friends to play, exercise and celebrate together.

The long-term park master plan includes the following features: entry plaza, restroom(s), event space, park promenade, fitness and sports area, inclusive play area, water play feature, flexible lawn areas, picnic areas with shelters, wetland and woodland restoration, off-leash dog area, community garden, extensive trail system with lighting, parking improvements, and expanded tree canopy and pollinator habitat.

Based on funding availability, the master plan will happen in phases. During the community engagement and master planning process, the team identified priority improvements that should be part of the first phase of redevelopment. This phase 1 plan includes: entry plaza, restroom(s), partial event space, park promenade, a phased playground, flexible lawn areas, partial picnic areas, wetland and woodland restoration, lighting, and expanded tree canopy.

Staff has seen strong community support for the master plan and Phase 1. The primary feedback is for construction to begin as soon as possible.

The Parks and Recreation Advisory Commission reviewed and unanimously approved the master plan during the August 21, 2024, commission meeting.

This contract amendment would provide the City with professional services from MIG to complete design for phase 1 development, including additional public outreach and design of an all-inclusive playground and enhanced cultural amenities. This amendment will also provide permitting services, construction plans and specifications, project estimates and aid to construction for Bagley Community Park.

Advantage(s)

1. Expands recreation opportunities at the park.
2. Enhances the natural beauty of the site and expands on the existing natural resource assets.
3. Enhances accessibility and safety to and within the park.
4. Provides event spaces to celebrate the cultural diversity of the Fourth Plain corridor and the City.

Challenge(s)

Requires increased maintenance support.

Budget Impact

The approved 2025-2026 Biennium Budget includes \$5.01M for the development of Bagley Community Park. The budget anticipates the design services requested in this contract amendment.

Prior Council Review

- ARPA Funds Investment Framework presentation at City Council Workshop on November 15, 2021
- Award of Contract to MIG on April 24, 2023

Action Requested

On Monday, October 6, 2025, authorize the City Manager to execute Amendment #2 of contract C-101193 with MIG Landscape Architecture to increase by \$1,035,510 for a new total contract amount of \$1,477,870 and authorize the City Manager, or designee, to amend this contract as needed, up to an additional 10% of the new contract value per the amendment.

Staff Contact

Terry Snyder, Park Development Manager, Terry.Snyder@cityofvancouver.us

Attachments:

1. Amendment No 2 final
2. Amendment No 1 executed
3. BAGLEY PARK - Original Contract C-101193
4. BAGLEY PARK_MasterPlan_ENGLISH_24-0821
5. BAGLEY PARK_MasterPlan_SPANISH_24-0821



**Services Agreement C-101193
Amendment No. 2
Bagley Community Masterplan and Construction Documents**

This second amendment ("Amendment") amends the Services Agreement number C-101193 ("Agreement") between the City of Vancouver, ("City"), and Moore Iacofano Goltsman, Inc., a California corporation ("Contractor"). Terms that are capitalized but undefined will have the meaning given them in the Agreement.

This Amendment amends the Agreement as follows:

1. **Section 1 Scope of Work** is amended as follows:

The Contractor agrees to provide the City all services and materials in the scope of work identified in Attachment "A", as amended by Amendment 2 to Amendment 1 and the Agreement.

2. **Section 2 Compensation** is amended as follows:

Payment to the Contractor for the Services described in this Agreement shall not exceed \$1,477,860.00 USD.

3. **Section 4 Term of Agreement** is amended as follows:

The Term of this Agreement begins May 1, 2023 and continues until December 29, 2028.

4. **Entire Agreement.** All unamended terms in the Agreement or any earlier amendment remain in full force and effect. This Amendment, together with the Agreement and any earlier amendments, is the entire agreement between the Parties, and supersedes any other agreement or discussion between them, whether written or oral in nature.

CITY OF VANCOUVER
A municipal corporation

CONTRACTOR:
Moore Iacofano Goltsman, Inc.

Lon Pluckhahn, City Manager

Signature

Date

Printed Name /Title

Attest:

Date

Natasha Ramras, City Clerk

Approved as to form:

City Attorney's Office

ATTACHMENT "A"

BAGLEY PARK DD-CD-CA + PLAY AREA MASTER PLAN

SCOPE OF WORK

09.05.25

TASK 1: PROJECT INITIATION

- 1.1 PROJECT KICKOFF COORDINATION CALL
MIG will confirm the team structure and the project roles and responsibilities, goals, schedule, and budget with City staff.
- 1.2 PROJECT WORK PLAN
MIG will prepare a Project Work Plan that outlines the project goals, tasks, key subtasks, schedule, team coordination and communication with the City, and expected deliverables.
- 1.3 SITE VISIT
MIG will visit the site to get familiarized with the site conditions.
- 1.4 CITY STAFF MEETING #1
MIG will meet with the City to review the site visit and finalize the Work Plan.
- 1.5 TEAM COORDINATION MEETINGS
The MIG Team will conduct regular internal meetings to keep the project coordinated.
- 1.6 PROJECT MANAGEMENT + COORDINATION
MIG will maintain regular communication with City staff, oversee subconsultants, handle administrative tasks, and provide monthly invoicing.

TASK 2: STAKEHOLDER ENGAGEMENT

- 2.1 CITY STAFF MEETING #1
MIG will meet with City staff to finalize the stakeholder engagement plan to explore design themes and art direction for Bagley Park.
- 2.2 CONVERSATIONS WITH STAKEHOLDERS #1
MIG will meet with stakeholders to explore how the park's identity can be expressed through materials, colors, forms, and site furnishings, and to learn which elements best represent their diverse cultures and community identity. MIG will bring visual examples to guide the conversations.
- 2.3 DESIGN THEME EXPLORATIONS
MIG will develop preliminary design themes based on input from the City and stakeholders.
- 2.4 CONVERSATIONS WITH STAKEHOLDERS #2
MIG will present preliminary design themes to stakeholders for feedback and refinement.
- 2.5 CITY STAFF MEETING #2
MIG will meet with City staff to review stakeholder input and discuss the design theme directions.
- 2.6 DESIGN THEME CONCEPTS
MIG will prepare refined design theme concepts for City and stakeholder review.

- 2.7 **ADDITIONAL STAKEHOLDER ENGAGEMENT ALLOWANCE**
A contingency allowance is included for any stakeholder engagement services that may arise during the project.
- 2.8 **PROJECT MANAGEMENT + COORDINATION**
MIG will maintain regular communication with City staff, oversee subconsultants, handle administrative tasks, and provide monthly invoicing.

TASK 3: PLAY AREA MASTER PLAN

- 3.1 **CITY STAFF MEETING #1**
MIG will meet with City staff to review the objectives, requirements, and priorities for the play area.
- 3.2 **PRELIMINARY CONCEPT DESIGN**
MIG will develop a preliminary concept for the play area that reflects the desired \$2.5M total budget and overall program goals.
- 3.3 **CITY STAFF MEETING #2**
MIG will meet with City staff to review the preliminary concept design and gather feedback.
- 3.4 **COMMUNITY ENGAGEMENT MATERIALS**
MIG will support the City's play area engagement efforts by preparing the preliminary concept drawings and materials for community outreach.
- 3.5 **REFINED CONCEPT DESIGN**
MIG will revise the preliminary concept design based on City and community feedback and prepare a refined concept for the play area.
- 3.6 **PLAY AREA COST ESTIMATE**
DCW will prepare a cost estimate for the refined concept design.
- 3.7 **CITY STAFF MEETING #3 / COST ESTIMATION**
MIG and DCW Cost Management (DCW) will meet with City staff to review the cost estimate and, if needed, discuss options for design adjustments and phasing.
- 3.8 **FINAL MASTER PLAN**
MIG will produce the final Play Area Master Plan to reflect the refined concept design and cost considerations.
- 3.9 **PROJECT MANAGEMENT + COORDINATION**
MIG will maintain regular communication with City staff, oversee subconsultants, handle administrative tasks, and provide monthly invoicing.

TASK 4: 60% DESIGN DEVELOPMENT (DD)

- 4.1 **CITY STAFF MEETING #1 / PARK MAINTENANCE**
The MIG Team will coordinate with City and Maintenance staff to kick off Design Development.
- 4.2 **GEOTECHNICAL ADDITIONAL STUDIES**
The geotechnical team will conduct additional studies to round out their work from the Master Plan phase (see Exhibit B, Geotechnics).

- 4.3 DD DESIGN STUDIES
MIG will develop design studies, including site layout, materials, planting concepts, and key features. These studies will inform the 60% DD drawings and support review discussions with the City and Maintenance Staff.
- 4.4 CITY STAFF MEETING #2 / PARK MAINTENANCE
The MIG Team will meet with City and Maintenance Staff to review the DD design studies and gather feedback.
- 4.5 60% DD DRAWINGS
The MIG Team will incorporate feedback and prepare 60% DD drawings for Phase 1 in AutoCAD.
- 4.6 TEAM COORDINATION MEETINGS
The MIG Team will conduct regular internal meetings to keep the project coordinated.
- 4.7 PROJECT MANAGEMENT + COORDINATION
MIG will maintain regular communication with City staff, oversee subconsultants, handle administrative tasks, and provide monthly invoicing.

TASK 5: LAND USE PERMITTING

- 5.1 IN-HOUSE PRE-ZONING CODE REVIEW
MIG will review the City's Zoning Code and Comprehensive Plan, identify applicable regulations, develop questions for the Pre-Application meeting, and outline potential land use permits.
- 5.2 PRE-APPLICATION MEETING
MIG will gather materials for the Pre-App Conference, complete and submit the application, attend the meeting, share key takeaways, and follow up with City staff.
- 5.3 DEVELOPMENT REVIEW APPLICATION
MIG will revise materials based on Pre-App feedback, coordinate with the project team, and prepare the full Development Review application. This includes a written summary showing how the project meets applicable codes. MIG will coordinate through the full review process until a decision is made.
- 5.4 WETLAND PERMITS
Herrera Environmental Consultants (Herrera) will develop applications for the necessary wetland-related permits (see Exhibit B).
- 5.5 TEAM COORDINATION MEETINGS (2)
The MIG Team will conduct regular internal meetings to keep the project coordinated.
- 5.6 PROJECT MANAGEMENT + COORDINATION
MIG will maintain regular communication with City staff, oversee subconsultants, handle administrative tasks, and provide monthly invoicing.

TASK 6: 100% DESIGN DEVELOPMENT (DD)

- 6.1 100% DD DRAWINGS—DRAFT
The MIG Team will advance the Phase 1 design and prepare the draft 100% DD drawings.
- 6.2 CITY STAFF MEETING #1
The MIG Team will meet with City staff to review the draft 100% DD drawings and gather feedback.
- 6.3 100% DD DRAWINGS—FINAL
The MIG Team will incorporate feedback and finalize the Design Development drawings.

- 6.4 TEAM COORDINATION MEETINGS
The MIG Team will conduct regular internal meetings to keep the project coordinated.
- 6.5 PROJECT MANAGEMENT + COORDINATION
MIG will maintain regular communication with City staff, oversee subconsultants, handle administrative tasks, and provide monthly invoicing.

TASK 7: 100% DD COST ESTIMATE

- 7.1 100% DD COST ESTIMATE
DCW will develop a cost estimate for the 100% DD design set (see Exhibit B).
- 7.2 CITY STAFF MEETING #1
The MIG Team will meet with City staff to review the 100% DD Cost Estimate and discuss potential adjustments.
- 7.3 TEAM COORDINATION MEETINGS
The MIG Team will conduct regular internal meetings to keep the project coordinated.
- 7.4 PROJECT MANAGEMENT + COORDINATION
MIG will maintain regular communication with City staff, oversee subconsultants, handle administrative tasks, and provide monthly invoicing.

TASK 8: 50% CONSTRUCTION DOCUMENTS (CD)

- 8.1 CITY STAFF MEETING #1
The MIG Team will meet with the City to sketch out the changes based on the cost estimate. These decisions will provide the basis for the CD design.
- 8.2 50% CD DRAWINGS—DRAFT
The MIG Team will prepare the draft 50% CDs, which will include the following sheets:
 - a. Cover
 - b. Abbreviations
 - c. Overall Site Plan
 - d. Existing Conditions Plan
 - e. Civil Demolition Plan
 - f. Civil Grading Plan
 - g. Civil Stormwater and Drainage Plans
 - h. Civil Wet Utility Plans
 - i. Civil Environmental Improvement Plans
 - j. Civil Temporary Erosion and Sediment Control Plan
 - k. Civil Tree Protection Plan
 - l. Civil Details
 - m. Landscape Materials Plan
 - n. Landscape Layout Plan
 - o. Irrigation Plan and Construction Details
 - p. Planting Schedule and Plan
 - q. Landscape Construction Details
 - r. Electrical Plan and Construction Details
 - s. Structural Engineering Details (if needed)
- 8.3 CITY STAFF MEETING #2
The MIG Team will meet with the City to review the draft 50% CD set.

- 8.4 50% CD DRAWINGS—FINAL
The MIG Team will incorporate the City's comments and finalize the 50% CD set.
- 8.5 50% TECHNICAL SPECIFICATIONS
The MIG Team will prepare a complete Table of Contents for the specifications that will accompany the CDs.
- 8.6 SITE VISIT
MIG will visit the site to support the 50% CD design efforts.
- 8.7 TEAM COORDINATION MEETINGS
The MIG Team will conduct regular internal meetings to keep the project coordinated.
- 8.8 PROJECT MANAGEMENT + COORDINATION
MIG will maintain regular communication with City staff, oversee subconsultants, handle administrative tasks, and provide monthly invoicing.

TASK 9: 75% CONSTRUCTION DOCUMENTS (CD)

- 9.1 CITY STAFF MEETING #1
The MIG Team will meet with City staff to review any necessary information prior to beginning the 75% CD set.
- 9.2 75% CD DRAWINGS—DRAFT
The MIG Team will prepare the draft 75% CD set.
- 9.3 CITY STAFF MEETING #2 / PARK MAINTENANCE
The MIG Team will meet with the City and Maintenance Staff to review the draft 75% CD set and gather feedback.
- 9.4 75% TECHNICAL SPECIFICATIONS
The MIG Team will advance the specifications to 75% completion.
- 9.5 75% CD IN-HOUSE QA/QC REVIEW
MIG's QA/QC team will review the CDs and specifications to assure quality and accuracy.
- 9.6 75% CD DRAWINGS—FINAL
The MIG Team will incorporate City comments and finalize the 75% CD set.
- 9.7 TEAM COORDINATION MEETINGS
The MIG Team will conduct regular internal meetings to keep the project coordinated.
- 9.8 PROJECT MANAGEMENT + COORDINATION
MIG will maintain regular communication with City staff, oversee subconsultants, handle administrative tasks, and provide monthly invoicing.

TASK 10: 75% CD COST ESTIMATE

- 10.1 75% CD COST ESTIMATE
DCW will prepare a cost estimate for the 75% CD design set (see Exhibit B).
- 10.2 VALUE ENGINEERING
If needed, MIG will coordinate with DCW to develop a draft round of additional bid alternates to present to the City.

- 10.3 CITY STAFF MEETING #1
The MIG Team will meet with City staff to review the 75% CD cost estimate and discuss preliminary ideas for additional bid alternates.
- 10.4 TEAM COORDINATION MEETINGS
The MIG Team will conduct regular internal meetings to keep the project coordinated.
- 10.5 PROJECT MANAGEMENT + COORDINATION
MIG will maintain regular communication with City staff, oversee subconsultants, handle administrative tasks, and provide monthly invoicing.

TASK 11: CONSTRUCTION PERMITTING

- 11.1 CITY STAFF MEETING #1
The MIG Team will meet with City staff to discuss permitting requirements and coordination.
- 11.2 SEPA PERMIT
The MIG Team will prepare the SEPA Permit (see Exhibit B, Herrera).
- 11.3 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
The MIG Team will prepare the NPDES Permit package (see Exhibit B, Herrera).
- 11.4 HEALTH DEPARTMENT PERMIT
The MIG Team will provide drawings and materials to support the City's submissions of the Health Department Permit package (see Exhibit B, Herrera).
- 11.5 TREE PERMIT
The MIG Team will prepare the Level 5 Tree Permit package (see Exhibit B, Herrera).
- 11.6 ENGINEERING/GRADING PERMIT
The MIG Team will prepare the Engineering and Grading Permit package (see Exhibit B, Herrera).
- 11.7 UNDERGROUND INJECTION CONTROL PERMIT
If needed, the MIG Team will assist with preparing the Underground Injection Control Permit package.
- 11.8 STORMWATER POLLUTION PREVENTION PLAN
The MIG Team will prepare the Permit package (see Exhibit B, Herrera).
- 11.9 GRADING PERMIT
The MIG Team will prepare the Grading Permit package (see Exhibit B, Herrera).
- 11.10 BUILDING PERMIT
The MIG Team will prepare the Building Permit package (see Exhibit B, Herrera).
- 11.11 TEAM COORDINATION MEETINGS
The MIG Team will conduct regular internal meetings to keep the project coordinated.
- 11.12 PROJECT MANAGEMENT + COORDINATION
MIG will maintain regular communication with City staff, oversee subconsultants, handle administrative tasks, and provide monthly invoicing.

TASK 12: 95% CONSTRUCTION DOCUMENTS (CITY REVIEW SET)

- 12.1 CITY STAFF MEETING #1
The MIG Team will meet with City staff to review any necessary information prior to beginning the 95% CDs.
- 12.2 95% CD DRAWINGS—DRAFT
The MIG Team will prepare the draft 95% CD set.
- 12.3 95% TECHNICAL SPECIFICATIONS
The MIG Team will advance the specifications to 95% completion.
- 12.4 CITY STAFF MEETING #2
The MIG Team will meet with the City to review the draft 95% CD set and gather feedback.
- 12.5 95% CD IN-HOUSE QA/QC REVIEW
MIG's QA/QC team will review the CDs and specifications to assure quality and accuracy.
- 12.6 95% CD DRAWINGS—FINAL
The MIG Team will incorporate City comments and finalize the 95% CD set.
- 12.7 SITE VISIT
MIG will visit the site to support 95% CD design efforts.
- 12.8 TEAM COORDINATION MEETINGS
The MIG Team will conduct regular internal meetings to keep the project coordinated.
- 12.9 PROJECT MANAGEMENT + COORDINATION
MIG will maintain regular communication with City staff, oversee subconsultants, handle administrative tasks, and provide monthly invoicing.

TASK 13: 100% CONSTRUCTION DOCUMENTS (CD)

- 13.1 CITY STAFF MEETING #1
The MIG Team will meet with City staff to review any necessary information prior to beginning the 100% CDs.
- 13.2 100% CD DRAWINGS—DRAFT
The MIG Team will prepare the draft 100% CD set.
- 13.3 100% TECHNICAL SPECIFICATIONS
The MIG Team will finalize the specifications for the project.
- 13.4 CITY STAFF MEETING #2
The MIG Team will meet with City staff to review the draft 100% CD set and gather feedback.
- 13.5 100% CD IN-HOUSE QA/QC REVIEW
MIG's QA/QC team will review the CDs and specifications to assure quality and accuracy.
- 13.6 100% CD DRAWINGS—FINAL
The MIG Team will incorporate City comments and finalize the 100% CD set.
- 13.7 TEAM COORDINATION MEETINGS
The MIG Team will conduct regular internal meetings to keep the project coordinated.

- 13.8 PROJECT MANAGEMENT + COORDINATION
MIG will maintain regular communication with City staff, oversee subconsultants, handle administrative tasks, and provide monthly invoicing.

TASK 14: BID SET + BIDDING SUPPORT

- 14.1 BID CD DRAWINGS
The MIG Team will incorporate any permitting review comments into the drawings to create the Bid Set.
- 14.2 BID SHEET
Based on the 100% CD set, the MIG Team will create a bid spreadsheet that organizes the project into measurable units for contractor pricing (see Exhibit B, DCW Cost Management).
- 14.3 PRE-BID MEETING
MIG will attend the Pre-Bid Meeting to respond to questions regarding the CDs.
- 14.4 ADDENDA & RESPONSES TO QUESTIONS
MIG will respond to Requests for Information (RFIs) and prepare any necessary addenda.
- 14.5 BID OPENING / REVIEW
MIG will support the City in reviewing bids to confirm completeness and compliance with the bid documents.
- 14.6 CITY STAFF MEETING #1 / VALUE ENGINEERING
If needed after the bid opening, the MIG Team will meet with the City to recommend scope adjustments, material substitutions, or alternate construction methods to reduce costs.
- 14.7 BID SELECTION
MIG will support the City in reviewing bids to determine the most responsive and responsible bidder.
- 14.8 TEAM COORDINATION MEETINGS
The MIG Team will conduct regular internal meetings to keep the project coordinated.
- 14.9 PROJECT MANAGEMENT + COORDINATION
MIG will maintain regular communication with City staff, oversee subconsultants, handle administrative tasks, and provide monthly invoicing.

TASK 15: CONSTRUCTION SET

- 15.1 CONSTRUCTION CD DRAWINGS
The MIG Team will prepare a final conformed set of CDs for the contractor's use. This set will incorporate any addenda and responses to bidder questions issued during the bidding process.
- 15.2 TEAM COORDINATION MEETINGS
The MIG Team will conduct as-needed internal meetings to keep the project coordinated.
- 15.3 PROJECT MANAGEMENT + COORDINATION
MIG will maintain regular communication with City staff, oversee subconsultants, handle administrative tasks, and provide monthly invoicing.

TASK 16: CONSTRUCTION OBSERVATION

- 16.1 PRE-CONSTRUCTION MEETING
The MIG Team will attend the Pre-Construction meeting led by the City and support the discussion by answering contractor questions and reviewing project goals, schedule, and responsibilities.

- 16.2 CONSTRUCTION DESIGN MODIFICATIONS
The MIG Team will provide design clarifications and minor revisions as needed during construction.
- 16.3 OAC MEETINGS
MIG will attend Owner-Architect-Contractor meetings to support project coordination and resolve issues.
- 16.4 SUBMITTAL / SHOP DRAWING REVIEW
The MIG Team will review submittals and shop drawings for compliance with design intent.
- 16.5 RFI / ASI RESPONSES
The MIG Team will respond to Requests for information (RFIs) and issue Architectural Supplemental Information (ASIs) during construction.
- 16.6 REVIEW CHANGE ORDERS
MIG will assist the City in reviewing change order requests for scope, cost, and design implications.
- 16.7 SITE VISITS AND FIELD OBSERVATION
MIG will conduct regular site visits to observe construction progress and general conformance with the drawings.
- 16.8 SUBSTANTIAL COMPLETION REVIEW
MIG will conduct a site walkthrough and prepare the Substantial Completion punch list.
- 16.9 FINAL COMPLETION REVIEW
MIG will conduct a final site review and confirm completion of all punch list items.
- 16.10 WARRANTY WALK-THROUGH REVIEW
At the end of the warranty period, MIG will assist the City in conducting a site review to identify any remaining issues.
- 16.11 AS-BUILT DRAWINGS
The MIG Team will prepare as-built drawings for the stormwater and sanitary sewer systems based on contractor redlines and field adjustments.
- 16.12 PROJECT MANAGEMENT + COORDINATION
MIG will maintain regular communication with City staff, oversee subconsultants, handle administrative tasks, and provide monthly invoicing.
- 16.13 ADDITIONAL CONSTRUCTION OBSERVATION ALLOWANCE
A contingency allowance is included for additional construction observation services that may arise during the project.
- 16.14 PROJECT CLOSE-OUT
MIG will coordinate final deliverables, complete final invoicing, and transfer files to the project archive.

TASK A-1: CONTINGENCY FOR WETLAND IMPACTS

- A-1a CONTINGENCY FOR WETLAND IMPACTS
If the design impacts on-site wetlands, Herrera will provide support to obtain the necessary wetland permits from the Army Corps of Engineers, Department of Ecology, and the City of Vancouver (see Exhibit B).
- A-1b TEAM COORDINATION MEETINGS
The MIG Team will conduct regular internal meetings to keep the project coordinated.

A-1c PROJECT MANAGEMENT + COORDINATION

MIG will maintain regular communication with City staff, oversee subconsultants, handle administrative tasks, and provide monthly invoicing.

PROJECT SCOPE ASSUMPTIONS

1. General Scope + Deliverables

- This scope includes services for Stakeholder Engagement, a Play Area Master Plan, and Design Development through Construction Observation for Bagley Park.
- The Play Area Master Plan will reflect a \$2.5M concept. CDs will only be prepared for Phase 1, representing approximately \$1.4M of the total budget.
- Deliverables will be provided in PDF format. Source files will be prepared in AutoCAD and other software selected at MIG's discretion.
- Printed copies or alternate file formats can be provided upon request and may incur additional costs.
- Project deliverables and schedule will be based on a clearly defined scope and Work Plan agreed upon by MIG and the City.
- One value engineering task is included. Additional VE services are available on a time-and-materials basis.

2. Project Management

- The Project Management budget assumes a 12-month schedule for Design Development and Construction Documents, plus 12 months for Construction Observation.
- MIG and the City will resolve project management issues promptly through direct communication to keep the project on schedule.
- The City will provide one designated Project Manager as the primary point of contact.
- MIG will provide project management for its team and support the City's overall project oversight.
- If the City's primary contact or project manager changes during the project and requires more than one hour of MIG staff time to re-initiate the project, this will be considered an additional service.

3. Comments + Review

- The City will provide a single, consolidated set of comments per document review phase, with ten (10) business days to review each CD deliverable.
- Comments from City departments, stakeholders, and agencies will be internally reviewed and coordinated before submission to MIG.
- Feedback should be provided digitally using track changes or commenting tools when possible.

4. Meetings + Engagement

- Team and coordination meetings are assumed to be virtual unless otherwise noted.
- The City will arrange, advertise, and host all public meetings and workshops. MIG will prepare materials and support facilitation.
- Public outreach materials will be prepared by MIG. The City will handle physical distribution.
- All meetings are assumed to be one hour unless otherwise specified.
- In-person meetings are limited to site visits and stakeholder discussions to explore the park's themes and art direction.

5. Environmental, Utilities, and Existing Conditions

- No offsite utility or street design beyond the project limits is included.
- The site is assumed to have adequate utility service.
- Floodplain, wetland, soil remediation, or other environmental assessments are excluded unless explicitly included.

6. Permitting + Fees

- All permitting fees and agency charges will be paid by the City or others as appropriate.
- MIG is not responsible for coordinating regulated utilities unless noted.

7. City of Vancouver Responsibilities

- The City will provide relevant reports or studies not provided during the Master Plan process.
- The City is responsible for securing site access, managing public expectations, and identifying key policy or political changes affecting the project.

8. Budget + Compensation

- MIG will not exceed the contract amount without written City authorization.
- Cost reallocations among phases or team members may occur as needed and will be communicated and reflected in monthly invoicing.

9. Invoicing

- MIG will issue monthly invoices based on fixed fee progress, with reimbursable expenses billed separately.
- The City will review and approve invoices and provide payment within 30 days.

10. Schedule

- MIG and the City will make best efforts to meet agreed deadlines.
- MIG is not responsible for delays outside its control.

Exclusions

The following services are not included in MIG's scope for Bagley Park unless explicitly noted otherwise:

1. Interpretive content, wayfinding, and signage.
2. Measured drawings, existing conditions verification, or surveys (topographic, boundary, utilities).
3. Early bid packages, phased CDs, or out-of-sequence services.
4. Design or coordination of future phases not included in this contract.
5. BIM or 3D modeling beyond what is required for 2D CDs.
6. Offsite improvements, including utilities, streets, or parking.
7. Coordination of regulated utility providers.
8. Value engineering services beyond the included allowance.
9. Commissioning of systems or third-party testing.
10. Renderings beyond those needed for internal design purposes.
11. Structural engineering or detailing of specialized elements.
12. Record drawings or as-builts beyond what is listed in the scope.



City of Vancouver
BAGLEY PARK PHASE 1 DD-CA + PLAY AREA CONCEPT
Estimated Project Cost

		MIG, Inc.														Subconsultants							MIG Direct Costs	Professional Fees Totals		
		Jacob Dumler		Christina Frank		Casey Howard		Rachel Edmonds		Justin Martin		Jia Wilson		Dino Viale		Katie Vickers		MIG Totals	Herrera (Civil/Env.)	R&W (Electrical)	Geotechnics (Geotech.)	DCW (Cost Est.)			Sub Totals	
		Principal-in-Charge		Project Manager/ Design Lead		Deputy PM/ Project Associate		Landscape Architect		Landscape Arch/ CAD Lead		Project Associate		Irrigation Designer		Permitting Specialist										
		Hrs@	\$245	Hrs@	\$175	Hrs@	\$135	Hrs@	\$160	Hrs@	\$190	Hrs@	\$130	Hrs@	\$160	Hrs@	\$115									
TASK 1: PROJECT INITIATION																										
1.1	Project Kick-off Coordination Call	2	\$490	2	\$350	2	\$270	2	\$320	2	\$380		\$0		\$0		\$0	10	\$1,810	\$11,555	\$1,520			\$13,075		\$14,885
1.2	Project Work Plan	4	\$980	48	\$8,400	12	\$1,620		\$0	12	\$2,280		\$0	4	\$640		\$0	80	\$13,920					\$0		\$13,920
1.3	Site Visits (1)		\$0	6	\$1,050	6	\$810	6	\$960		\$0		\$0		\$0		\$0	18	\$2,820					\$0	\$75	\$2,895
1.4	City Staff Meeting #1	1	\$245	1	\$175	1	\$135		\$0	1	\$190		\$0		\$0		\$0	4	\$745					\$0		\$745
1.5	Team Coordination Meetings (1)	1	\$245	1	\$175	1	\$135	1	\$160	1	\$190	1	\$130	1	\$160		\$0	7	\$1,195					\$0		\$1,195
1.6	Project Management + Coordination	1	\$245	3	\$525	1	\$135		\$0		\$0		\$0		\$0		\$0	5	\$905					\$0		\$905
Subtotal		9	\$2,205	61	\$10,675	23	\$3,105	9	\$1,440	16	\$3,040	1	\$130	5	\$800	0	\$0	124	\$21,395	\$11,555	\$1,520	\$0	\$0	\$13,075	\$75	\$34,545
TASK 2: STAKEHOLDER ENGAGEMENT																										
2.1	City Staff Meeting #1	1	\$245	1	\$175	1	\$135		\$0		\$0		\$0		\$0		\$0	3	\$555					\$0		\$555
2.2	Conversations w/ Stakeholders #1	2	\$490	12	\$2,100	16	\$2,160		\$0		\$0		\$0		\$0		\$0	30	\$4,750					\$0		\$4,750
2.3	Design Theme Explorations	4	\$980	20	\$3,500	16	\$2,160		\$0		\$0		\$0		\$0		\$0	40	\$6,640					\$0		\$6,640
2.4	Conversations w/ Stakeholders #2	2	\$490	12	\$2,100	16	\$2,160		\$0		\$0		\$0		\$0		\$0	30	\$4,750					\$0		\$4,750
2.5	City Staff Meeting #2		\$0	1	\$175	1	\$135		\$0		\$0		\$0		\$0		\$0	2	\$310					\$0		\$310
2.6	Design Theme Concepts	1	\$245	16	\$2,800	20	\$2,700		\$0		\$0		\$0		\$0		\$0	37	\$5,745					\$0		\$5,745
2.7	Additional Stakeholder Engagement Allowance		\$0	8	\$1,400	8	\$1,080		\$0		\$0		\$0		\$0		\$0	16	\$2,480					\$0		\$2,480
2.8	Project Management + Coordination	1	\$245	2	\$350		\$0		\$0		\$0		\$0		\$0		\$0	3	\$595					\$0		\$595
Subtotal		11	\$2,695	72	\$12,600	78	\$10,530	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	161	\$25,825	\$0	\$0	\$0	\$0	\$0	\$0	\$25,825
TASK 3: PLAY AREA MASTER PLAN																										
3.1	City Staff Meeting #1	2	\$490	2	\$350	2	\$270		\$0		\$0		\$0		\$0		\$0	6	\$1,110					\$0		\$1,110
3.2	Preliminary Concept Design	4	\$980	40	\$7,000	36	\$4,860		\$0		\$0		\$0		\$0		\$0	80	\$12,840					\$0		\$12,840
3.3	City Staff Meeting #2	2	\$490	2	\$350	2	\$270		\$0		\$0		\$0		\$0		\$0	6	\$1,110					\$0		\$1,110
3.4	Community Engagement Materials (City-led Outreach)	2	\$490	36	\$6,300	36	\$4,860		\$0		\$0		\$0		\$0		\$0	74	\$11,650					\$0		\$11,650
3.5	Refined Concept Design	4	\$980	36	\$6,300	40	\$5,400		\$0		\$0		\$0		\$0		\$0	80	\$12,680					\$0		\$12,680
3.6	Play Area Cost Estimate	2	\$490	4	\$700	4	\$540		\$0		\$0		\$0		\$0		\$0	10	\$1,730				\$2,500	\$2,500		\$4,230
3.7	City Staff Meeting #3 / Cost Estimation	2	\$490	4	\$700	4	\$540		\$0		\$0		\$0		\$0		\$0	10	\$1,730					\$0		\$1,730
3.8	Final Master Plan	1	\$245	24	\$4,200	36	\$4,860		\$0		\$0		\$0		\$0		\$0	61	\$9,305					\$0		\$9,305
3.9	Project Management + Coordination	2	\$490	12	\$2,100	4	\$540		\$0		\$0		\$0		\$0		\$0	18	\$3,130					\$0		\$3,130
Subtotal		21	\$5,145	160	\$28,000	164	\$22,140	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	345	\$55,285	\$0	\$0	\$0	\$2,500	\$2,500	\$0	\$57,785
TASK 4: 60% DESIGN DEVELOPMENT (DD)																										
4.1	City Staff Meeting #1 / Park Maintenance	2	\$490	2	\$350	2	\$270		\$0		\$0		\$0		\$0		\$0	6	\$1,110	\$16,600	\$3,920			\$20,520		\$21,630
4.2	Geotechnical Additional Studies	2	\$490	2	\$350		\$0		\$0		\$0		\$0		\$0		\$0	4	\$840			\$14,265		\$14,265		\$15,105
4.3	DD Design Studies	16	\$3,920	80	\$14,000	72	\$9,720		\$0		\$0		\$0	8	\$1,280		\$0	176	\$28,920					\$0		\$28,920
4.4	City Staff Meeting #2 / Park Maintenance	2	\$490	2	\$350	2	\$270		\$0		\$0		\$0		\$0		\$0	6	\$1,110					\$0		\$1,110
4.5	60% DD Drawings	16	\$3,920	64	\$11,200	50	\$6,750	24	\$3,840	12	\$2,280		\$0	8	\$1,280		\$0	174	\$29,270					\$0		\$29,270
4.6	Team Coordination Meetings (2)	4	\$980	4	\$700	4	\$540	2	\$320	2	\$380		\$0	1	\$160		\$0	17	\$3,080					\$0		\$3,080
4.7	Project Management + Coordination	4	\$980	16	\$2,800	8	\$1,080		\$0		\$0		\$0		\$0		\$0	28	\$4,860					\$0		\$4,860
Subtotal		46	\$11,270	170	\$29,750	138	\$18,630	26	\$4,160	14	\$2,660	0	\$0	17	\$2,720	0	\$0	411	\$69,190	\$16,600	\$3,920	\$14,265	\$0	\$34,785	\$0	\$103,975
TASK 5: LAND USE + WETLAND PERMITTING																										
5.1	In-House Pre-Zoning Code Review		\$0		\$0		\$0	2	\$320		\$0		\$0		\$0	8	\$920	10	\$1,240			\$580		\$580		\$1,820
5.2	Pre-Application Meeting	1	\$245	2	\$350		\$0	2	\$320		\$0		\$0		\$0	16	\$1,840	21	\$2,755					\$0		\$2,755
5.3	Development Review Application		\$0	2	\$350		\$0	12	\$1,920		\$0		\$0		\$0	132	\$15,180	146	\$17,450					\$0		\$17,450
5.4	Wetland Permits		\$0		\$0		\$0		\$0	2	\$380		\$0		\$0		\$0	2	\$380	\$31,065				\$31,065		\$31,445
5.5	Team Coordination Meetings (2)		\$0	2	\$350		\$0	2	\$320		\$0		\$0	1	\$160	4	\$460	9	\$1,290					\$0		\$1,290
5.6	Project Management + Coordination		\$0	8	\$1,400		\$0		\$0		\$0		\$0		\$0	24	\$2,760	32	\$4,160					\$0		\$4,160
Subtotal		1	\$245	14	\$2,450	0	\$0	18	\$2,880	2	\$380	0	\$0	1	\$160	184	\$21,160	220	\$27,275	\$31,065	\$580	\$0	\$0	\$31,645	\$0	\$58,920
TASK 6: 100% DESIGN DEVELOPMENT (DD)																										
6.1	100% DD Drawings (Draft)	8	\$1,960	48	\$8,400	40	\$5,400	40	\$6,400	24	\$4,560	8	\$1,040	4	\$640		\$0	172	\$28,400	\$26,575	\$4,840			\$31,415		\$59,815
6.2	City Staff Meeting #1	2	\$490	2	\$350	2	\$270		\$0		\$0		\$0		\$0		\$0	6	\$1,110					\$0		\$1,110
6.3	100% DD Drawings (Final)	8	\$1,960	48	\$8,400	40	\$5,400	32	\$5,120	20	\$3,800	8	\$1,040	8	\$1,280		\$0	164	\$27,000					\$0		\$27,000
6.4	Team Coordination Meetings (4)	6	\$1,470	6	\$1,050	6	\$810	4	\$640	4	\$760		\$0	2	\$320		\$0	28	\$5,050					\$0		\$5,050
6.5	Project Management + Coordination	4	\$980	12	\$2,100	4	\$540		\$0		\$0		\$0		\$0		\$0	20	\$3,620					\$0		\$3,620
Subtotal		28	\$6,860	116	\$20,300	92	\$12,420	76	\$12,160	48	\$9,120	16	\$2,080	14	\$2,240	0	\$0	390	\$65,180	\$26,575	\$4,840	\$0	\$0	\$31,415	\$0	\$96,595

City of Vancouver
BAGLEY PARK PHASE 1 CD-CA + PLAY AREA CONCEPT
Estimated Project Cost

		MIG, Inc.														Subconsultants							MIG Direct Costs	Professional Fees Totals		
		Jacob Dumler		Christina Frank		Casey Howard		Rachel Edmonds		Justin Martin		Jia Wilson		Dino Viale		Katie Vickers		MIG Totals	Herrera (Civil/Env.)	R&W (Electrical)	Geotechnics (Geotech.)	DCW (Cost Est.)			Sub Totals	
		Principal-in-Charge		Project Manager/ Design Lead		Deputy PM/ Project Associate		Landscape Architect		Landscape Arch/ CAD Lead		Project Associate		Irrigation Designer		Permitting Specialist										
		Hrs@	\$245	Hrs@	\$175	Hrs@	\$135	Hrs@	\$160	Hrs@	\$190	Hrs@	\$130	Hrs@	\$160	Hrs@	\$115									
TASK 7: 100% DD COST ESTIMATE																										
7.1	100% DD Cost Estimate	4	\$980	8	\$1,400	8	\$1,080		\$0		\$0		\$0		\$0		\$0	20	\$3,460	\$2,375	\$1,440		\$6,120	\$9,935		\$13,395
7.2	City Staff Meeting #1	1	\$245	1	\$175	1	\$135		\$0		\$0		\$0		\$0		\$0	3	\$555				\$0		\$555	
7.3	Team Coordination Meetings (2)	2	\$490	2	\$350	2	\$270		\$0		\$0		\$0		\$0		\$0	6	\$1,110				\$0		\$1,110	
7.4	Project Management + Coordination	1	\$245	2	\$350	1	\$135		\$0		\$0		\$0		\$0		\$0	4	\$730				\$0		\$730	
Subtotal		8	\$1,960	13	\$2,275	12	\$1,620	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	33	\$5,855	\$2,375	\$1,440	\$0	\$6,120	\$9,935	\$0	\$15,790
TASK 8: 50% CONSTRUCTION DOCUMENTS (CD) ~54 sheets																										
8.1	City Staff Meeting #1	1	\$245	1	\$175	1	\$135		\$0		\$0		\$0		\$0		\$0	3	\$555	\$29,375	\$7,490		\$36,865		\$37,420	
8.2	50% CD Drawings (Draft)	4	\$980	36	\$6,300	48	\$6,480	24	\$3,840	12	\$2,280	8	\$1,040	8	\$1,280		\$0	140	\$22,200				\$0		\$22,200	
8.3	City Staff Meeting #2	1	\$245	1	\$175	1	\$135		\$0		\$0		\$0		\$0		\$0	3	\$555				\$0		\$555	
8.4	50% CD Drawings (Final)	2	\$490	16	\$2,800	24	\$3,240	12	\$1,920	8	\$1,520		\$0	4	\$640		\$0	66	\$10,610				\$0		\$10,610	
8.5	50% Technical Specifications TOC	2	\$490	4	\$700		\$0	1	\$160	8	\$1,520		\$0	2	\$320		\$0	17	\$3,190				\$0		\$3,190	
8.6	Site Visits (1)		\$0	4	\$700	4	\$540	4	\$640		\$0		\$0		\$0		\$0	12	\$1,880				\$0	\$75	\$1,955	
8.7	Team Coordination Meetings (4)	4	\$980	4	\$700	4	\$540	4	\$640	4	\$760		\$0	2	\$320		\$0	22	\$3,940				\$0		\$3,940	
8.8	Project Management + Coordination	2	\$490	16	\$2,800	6	\$810		\$0		\$0		\$0		\$0		\$0	24	\$4,100				\$0		\$4,100	
Subtotal		16	\$3,920	82	\$14,350	88	\$11,880	45	\$7,200	32	\$6,080	8	\$1,040	16	\$2,560	0	\$0	287	\$47,030	\$29,375	\$7,490	\$0	\$0	\$36,865	\$75	\$83,970
TASK 9: 75% CONSTRUCTION DOCUMENTS (CD)																										
9.1	City Staff Meeting #1	1	\$245	1	\$175	1	\$135		\$0		\$0		\$0		\$0		\$0	3	\$555	\$18,445	\$8,820		\$27,265		\$27,820	
9.2	75% CD Drawings (Draft)	2	\$490	48	\$8,400	60	\$8,100	40	\$6,400	24	\$4,560	8	\$1,040	16	\$2,560		\$0	198	\$31,550				\$0		\$31,550	
9.3	City Staff Meeting #2 / Park Maintenance	1	\$245	1	\$175	1	\$135		\$0	1	\$190		\$0		\$0		\$0	4	\$745				\$0		\$745	
9.4	75% Technical Specifications	2	\$490	8	\$1,400		\$0	4	\$640	24	\$4,560		\$0	4	\$640		\$0	42	\$7,730				\$0		\$7,730	
9.5	75% CD In-House QAQC Review	4	\$980		\$0		\$0		\$0	4	\$760		\$0		\$0		\$0	8	\$1,740				\$0		\$1,740	
9.6	75% CD Drawings (Final)	2	\$490	16	\$2,800	24	\$3,240	16	\$2,560	4	\$760		\$0	4	\$640		\$0	66	\$10,490				\$0		\$10,490	
9.7	Team Coordination Meetings (2)	2	\$490	2	\$350	2	\$270	2	\$320	2	\$380		\$0	1	\$160		\$0	11	\$1,970				\$0		\$1,970	
9.8	Project Management + Coordination	2	\$490	8	\$1,400	4	\$540		\$0		\$0		\$0		\$0		\$0	14	\$2,430				\$0		\$2,430	
Subtotal		16	\$3,920	84	\$14,700	92	\$12,420	62	\$9,920	59	\$11,210	8	\$1,040	25	\$4,000	0	\$0	346	\$57,210	\$18,445	\$8,820	\$0	\$0	\$27,265	\$0	\$84,475
TASK 10: 75% CD COST ESTIMATE																										
10.1	75% CD Cost Estimate	4	\$980	4	\$700	4	\$540	2	\$320	2	\$380		\$0		\$0		\$0	16	\$2,920	\$2,445	\$2,580		\$7,560	\$12,585		\$15,505
10.2	Value Engineering	8	\$1,960	8	\$1,400	4	\$540		\$0	2	\$380		\$0	2	\$320		\$0	24	\$4,600			\$3,600	\$3,600		\$8,200	
10.3	City Staff Meeting #1	2	\$490	2	\$350	2	\$270		\$0		\$0		\$0		\$0		\$0	6	\$1,110				\$0		\$1,110	
10.4	Team Coordination Meetings (2)	2	\$490	2	\$350	2	\$270	2	\$320		\$0		\$0		\$0		\$0	8	\$1,430				\$0		\$1,430	
10.5	Project Management + Coordination	2	\$490	4	\$700	2	\$270		\$0		\$0		\$0		\$0		\$0	8	\$1,460				\$0		\$1,460	
Subtotal		18	\$4,410	20	\$3,500	14	\$1,890	4	\$640	4	\$760	0	\$0	2	\$320	0	\$0	62	\$11,520	\$2,445	\$2,580	\$0	\$11,160	\$16,185	\$0	\$27,705
TASK 11: CONSTRUCTION PERMITTING																										
11.1	City Staff Meeting #1		\$0	1	\$175		\$0	2	\$320	1	\$190		\$0		\$0		\$0	4	\$685	\$7,245	\$580		\$7,825		\$8,510	
11.2	SEPA Permit Support Materials		\$0	1	\$175		\$0	2	\$320	1	\$190		\$0		\$0		\$0	4	\$685				\$0		\$685	
11.3	Nat'l Poll. Dis. Elim. System Permit Support Mat'ls		\$0	1	\$175		\$0	2	\$320	1	\$190		\$0		\$0		\$0	4	\$685				\$0		\$685	
11.4	Health Dept Permit Support Materials		\$0	1	\$175		\$0	2	\$320	1	\$190		\$0		\$0		\$0	4	\$685				\$0		\$685	
11.5	Tree Permit Support Materials		\$0	1	\$175		\$0	2	\$320		\$0		\$0		\$0		\$0	3	\$495				\$0		\$495	
11.6	Engineering/Grading Permit Support Materials	1	\$245	1	\$175		\$0	2	\$320	2	\$380		\$0		\$0		\$0	6	\$1,120				\$0		\$1,120	
11.7	Underground Inj. Control Permit Support Materials		\$0	1	\$175		\$0	2	\$320	1	\$190		\$0		\$0		\$0	4	\$685				\$0		\$685	
11.8	Stormwater Pollution Prevention Plan Support Mat'ls		\$0	1	\$175		\$0	2	\$320	2	\$380		\$0		\$0		\$0	5	\$875				\$0		\$875	
11.9	Grading Permit Support Materials		\$0	1	\$175		\$0	2	\$320	2	\$380		\$0		\$0		\$0	5	\$875				\$0		\$875	
11.10	Building Permit Support Materials		\$0	1	\$175		\$0	2	\$320	1	\$190		\$0		\$0		\$0	4	\$685				\$0		\$685	
11.11	Team Coordination Meetings (1)	1	\$245	1	\$175	1	\$135	1	\$160	1	\$190		\$0	1	\$160		\$0	6	\$1,065				\$0		\$1,065	
11.12	Project Management + Coordination	2	\$490	8	\$1,400		\$0	2	\$320	2	\$380		\$0		\$0		\$0	14	\$2,590				\$0		\$2,590	
Subtotal		4	\$980	19	\$3,325	1	\$135	23	\$3,680	15	\$2,850	0	\$0	1	\$160	0	\$0	63	\$11,130	\$7,245	\$580	\$0	\$0	\$7,825	\$0	\$18,955
TASK 12: 95% CONSTRUCTION DOCUMENTS (CD)																										
12.1	City Staff Meeting #1	1	\$245	1	\$175	1	\$135		\$0	1	\$190		\$0		\$0		\$0	4	\$745	\$13,930	\$4,690		\$18,620		\$19,365	
12.2	95% CD Drawings (Draft)	8	\$1,960	36	\$6,300	60	\$8,100	48	\$7,680	24	\$4,560	12	\$1,560	12	\$1,920		\$0	200	\$32,080				\$0		\$32,080	
12.3	95% Technical Specifications	2	\$490	4	\$700		\$0	8	\$1,280	16	\$3,040		\$0	4	\$640		\$0	34	\$6,150				\$0		\$6,150	
12.4	City Staff Meeting #2	1	\$245	1	\$175	1	\$135		\$0		\$0		\$0		\$0		\$0	3	\$555				\$0		\$555	
12.5	95% CD In-House QAQC Review	4	\$980		\$0		\$0		\$0	4	\$760		\$0		\$0		\$0	8	\$1,740				\$0		\$1,740	
12.6	95% CD Drawings (Final)	4	\$980	24	\$4,200	40	\$5,400	32	\$5,120	8	\$1,520		\$0	8	\$1,280		\$0	116	\$18,500				\$0		\$18,500	
12.7	Site Visits (1)		\$0	4	\$700	4	\$540	4	\$640		\$0		\$0		\$0		\$0	12	\$1,880				\$0	\$75	\$1,955	
12.8	Team Coordination Meetings (2)	2	\$490	2	\$350	2	\$270	2	\$320	2	\$380		\$0	2	\$320		\$0	12	\$2,130				\$0		\$2,130	
12.9	Project Management + Coordination	2	\$490	8	\$1,400	4	\$540		\$0		\$0		\$0		\$0		\$0	14	\$2,430				\$0		\$2,430	
Subtotal		24	\$5,880	80	\$14,000	112	\$15,120	94	\$15,040	55	\$10,450	12	\$1,560	26	\$4,160	0	\$0	403	\$66,210	\$13,930	\$4,690	\$0	\$0	\$18,620	\$75	\$84,905

City of Vancouver
BAGLEY PARK PHASE 1 DD-CA + PLAY AREA CONCEPT
Estimated Project Cost

		MIG, Inc.												Subconsultants							MIG Direct Costs	Professional Fees Totals				
		Jacob Dumler		Christina Frank		Casey Howard		Rachel Edmonds		Justin Martin		Jia Wilson		Dino Viale		Katie Vickers		MIG Totals	Herrera (Civil/Env.)	R&W (Electrical)			Geotechnics (Geotech.)	DCW (Cost Est.)	Sub Totals	
		Principal-in-Charge		Project Manager/ Design Lead		Deputy PM/ Project Associate		Landscape Architect		Landscape Arch/ CAD Lead		Project Associate		Irrigation Designer		Permitting Specialist										
		Hrs@	\$245	Hrs@	\$175	Hrs@	\$135	Hrs@	\$160	Hrs@	\$190	Hrs@	\$130	Hrs@	\$160	Hrs@	\$115									
TASK 13: 100% CONSTRUCTION DOCUMENTS (CD)																										
13.1	City Staff Meeting #1	1	\$245	1	\$175	1	\$135		\$0	1	\$190		\$0		\$0		\$0	4	\$745	\$9,800	\$3,350			\$13,150		\$13,895
13.2	100% CD Drawings (Draft)	2	\$490	16	\$2,800	24	\$3,240	16	\$2,560	8	\$1,520	4	\$520	4	\$640		\$0	74	\$11,770					\$0		\$11,770
13.3	100% Technical Specifications		\$0	4	\$700		\$0	4	\$640	8	\$1,520		\$0	4	\$640		\$0	20	\$3,500					\$0		\$3,500
13.4	City Staff Meeting #2	1	\$245	1	\$175	1	\$135		\$0		\$0		\$0		\$0		\$0	3	\$555					\$0		\$555
13.5	100% CD In-House QAQC Review	4	\$980		\$0		\$0		\$0	4	\$760		\$0		\$0		\$0	8	\$1,740					\$0		\$1,740
13.6	100% CD Drawings (Final)	2	\$490	12	\$2,100	24	\$3,240	16	\$2,560	8	\$1,520		\$0	4	\$640		\$0	66	\$10,550					\$0		\$10,550
13.7	Team Coordination Meetings (2)	2	\$490	2	\$350	2	\$270	2	\$320	2	\$380		\$0	1	\$160		\$0	11	\$1,970					\$0		\$1,970
13.8	Project Management + Coordination	2	\$490	8	\$1,400	4	\$540		\$0		\$0		\$0		\$0		\$0	14	\$2,430					\$0		\$2,430
Subtotal		14	\$3,430	44	\$7,700	56	\$7,560	38	\$6,080	31	\$5,890	4	\$520	13	\$2,080	0	\$0	200	\$33,260	\$9,800	\$3,350	\$0	\$0	\$13,150	\$0	\$46,410
TASK 14: BID SET + BID SUPPORT																										
14.1	Bid CD Drawings	2	\$490	2	\$350	4	\$540	4	\$640	2	\$380		\$0		\$0		\$0	14	\$2,400	\$4,240	\$4,000			\$8,240		\$10,640
14.2	Bid Sheet	2	\$490	4	\$700	2	\$270	4	\$640	4	\$760		\$0	4	\$640		\$0	20	\$3,500					\$0		\$3,500
14.3	Pre-Bid Meeting	2	\$490	2	\$350		\$0		\$0		\$0		\$0		\$0		\$0	4	\$840					\$0		\$840
14.4	Addenda & Responses to Questions (1)	2	\$490	2	\$350		\$0		\$0	2	\$380		\$0		\$0		\$0	6	\$1,220					\$0		\$1,220
14.5	Bid Opening / Review	1	\$245	1	\$175		\$0		\$0		\$0		\$0		\$0		\$0	2	\$420					\$0		\$420
14.6	City Staff Meeting #1 / Value Engineering	2	\$490	6	\$1,050	2	\$270		\$0		\$0		\$0		\$0		\$0	10	\$1,810					\$0		\$1,810
14.7	Bid Selection	1	\$245	1	\$175		\$0		\$0		\$0		\$0		\$0		\$0	2	\$420					\$0		\$420
14.8	Team Coordination Meetings (1)	1	\$245	1	\$175	1	\$135	1	\$160	1	\$190		\$0	1	\$160		\$0	6	\$1,065					\$0		\$1,065
14.9	Project Management + Coordination	2	\$490	4	\$700	2	\$270		\$0		\$0		\$0		\$0		\$0	8	\$1,460					\$0		\$1,460
Subtotal		15	\$3,675	23	\$4,025	11	\$1,485	9	\$1,440	9	\$1,710	0	\$0	5	\$800	0	\$0	72	\$13,135	\$4,240	\$4,000	\$0	\$0	\$8,240	\$0	\$21,375
TASK 15: CONSTRUCTION SET																										
15.1	Construction CD Drawings	2	\$490	8	\$1,400	12	\$1,620	8	\$1,280	4	\$760		\$0		\$0		\$0	34	\$5,550	\$5,180	\$1,970			\$7,150		\$12,700
15.2	Team Coordination Meetings (1)	2	\$490	2	\$350	2	\$270	2	\$320	2	\$380		\$0		\$0		\$0	10	\$1,810					\$0		\$1,810
15.3	Project Management + Coordination	2	\$490	4	\$700	2	\$270		\$0		\$0		\$0		\$0		\$0	8	\$1,460					\$0		\$1,460
Subtotal		6	\$1,470	14	\$2,450	16	\$2,160	10	\$1,600	6	\$1,140	0	\$0	0	\$0	0	\$0	52	\$8,820	\$5,180	\$1,970	\$0	\$0	\$7,150	\$0	\$15,970
TASK 16: CONSTRUCTION OBSERVATION (12 mos.)																										
16.1	Pre-Construction Meeting	2	\$490	4	\$700	4	\$540	4	\$640		\$0		\$0		\$0		\$0	14	\$2,370	\$24,830	\$13,290	\$5,670		\$43,790	\$75	\$46,235
16.2	Construction Design Modifications	12	\$2,940	20	\$3,500	20	\$2,700	20	\$3,200	10	\$1,900		\$0		\$0		\$0	82	\$14,240					\$0		\$14,240
16.3	OAC Meetings (26)	4	\$980	26	\$4,550	6	\$810	6	\$960	6	\$1,140		\$0	4	\$640		\$0	52	\$9,080					\$0		\$9,080
16.4	Submittal / Shop Drawing Review (20)	8	\$1,960	26	\$4,550	20	\$2,700		\$0	6	\$1,140		\$0	4	\$640		\$0	64	\$10,990					\$0		\$10,990
16.5	RFI/ASI Responses (16)	6	\$1,470	20	\$3,500	16	\$2,160		\$0	6	\$1,140		\$0	4	\$640		\$0	52	\$8,910					\$0		\$8,910
16.6	Review Change Orders (2)	4	\$980	4	\$700		\$0		\$0		\$0		\$0	4	\$640		\$0	12	\$2,320					\$0		\$2,320
16.7	Site Visits and Field Observation (18)	8	\$1,960	54	\$9,450	36	\$4,860	36	\$5,760		\$0		\$0		\$0		\$0	134	\$22,030					\$0	\$1,520	\$23,550
16.8	Substantial Completion Review	4	\$980	12	\$2,100		\$0	12	\$1,920		\$0		\$0		\$0		\$0	28	\$5,000					\$0	\$75	\$5,075
16.9	Final Completion Review	1	\$245	4	\$700	2	\$270	2	\$320		\$0		\$0		\$0		\$0	9	\$1,535					\$0	\$75	\$1,610
16.10	Warranty Walk-Through Review	1	\$245	4	\$700	2	\$270	2	\$320		\$0		\$0		\$0		\$0	9	\$1,535					\$0	\$75	\$1,610
16.11	As-Built Drawings (Storm + Sewer)		\$0	2	\$350		\$0		\$0	4	\$760		\$0	2	\$320		\$0	8	\$1,430					\$0		\$1,430
16.12	Project Management + Coordination	4	\$980	30	\$5,250		\$0		\$0		\$0		\$0		\$0		\$0	34	\$6,230					\$0		\$6,230
16.13	Additional Construction Observation Allowance		\$0		\$0		\$0		\$0		\$0		\$0		\$0		\$0	0	\$25,000					\$0		\$25,000
16.14	Project Close-Out	2	\$490	4	\$700	4	\$540	2	\$320		\$0		\$0	2	\$320		\$0	14	\$2,370					\$0		\$2,370
Subtotal		56	\$13,720	210	\$36,750	110	\$14,850	84	\$13,440	32	\$6,080	0	\$0	20	\$3,200	0	\$0	512	\$113,040	\$24,830	\$13,290	\$5,670	\$0	\$43,790	\$1,820	\$158,650
TASK A-1: CONTINGENCY FOR WETLAND IMPACTS																										
A-1a	Contingency for Wetland Impacts	1	\$245	1	\$175		\$0	1	\$160	4	\$760		\$0		\$0		\$0	7	\$1,340	\$70,595				\$70,595		\$71,935
A-1b	Team Coordination Meetings (1)		\$0	1	\$175		\$0	1	\$160	1	\$190		\$0		\$0		\$0	3	\$525					\$0		\$525
A-1c	Project Management + Coordination	1	\$245	4	\$700		\$0		\$0		\$0		\$0		\$0		\$0	5	\$945					\$0		\$945
Subtotal		2	\$490	6	\$1,050	0	\$0	2	\$320	5	\$950	0	\$0	0	\$0	0	\$0	15	\$2,810	\$70,595	\$0	\$0	\$0	\$70,595	\$0	\$73,405
SUBTOTAL		295	\$72,275	1188	\$207,900	1007	\$135,945	500	\$80,000	328	\$62,320	49	\$6,370	145	\$23,200	184	\$21,160	3696	\$634,170	\$274,255	\$59,070	\$19,935	\$19,780	\$373,040	\$2,045	\$1,009,255
7% Markup (on Subconsultants and Direct Costs)																										\$26,255
TOTAL PROJECT COSTS																										\$1,035,510

Additional Tasks + Fee Remaining from Original Contract		
ADD2	Habitat Assessment	\$8,715
ADD3	Tree Survey + Arborist Report	\$11,335
	Subtotal	\$20,050

Bagley Community Park

MASTER PLAN

PARK DESIGN



MAP LEGEND

Existing Features

- Park Boundary
- Trees
- ~ Creek

Proposed Features

- Trees
- Pathways + Trails
- ▭ Building
- 🚗 New Parking
- 🏠 Picnic Area
- 🌿 Open Space/Events
- 💧 Wetland Restoration
- 🌳 Community Garden
- 💧 Water Feature
- 🎮 Play Area
- 🏀 Sports/Fitness
- 🎮 Games/Hangout Space

PROPOSED DESIGN ELEMENTS

ENTRY PLAZA

- Restroom
- Lounge Seating Area
- Games/Hangout Space
- Public Art

EVENT SPACE

- Event space for 1000+ people
- Covered Performance Stage
- Group Picnics
- Outdoor Classroom
- Flexible Lawn Space

PARK PROMENADE

- Wide Strolling Walkway
- Events
- Food Cart Space/Pull-ins
- Public Art

FITNESS + SPORTS

- Teen/Adult Fitness Features
- Basketball Court
- Futsal Court
- Hangout Space

PLAY AREAS

- Inclusive Children's Play Area
- Nature Play Area

WATER FEATURES

- Water Play Channel
- Cooling Mist Station
- Rainwater Runnel

FLEXIBLE LAWN AREAS

- Pick-up Sports Games
- Picnicking
- Gathering

PICNIC AREAS

- Picnic Shelters
- Cooking Amenities + Utilities
- Picnic Groves

WETLAND AREA

- Wetland Restoration
- Wetland Overlook Deck
- Nature Learning
- Wildlife Viewing
- Outdoor Learning Space

WOODLAND AREA

- Wetland Restoration
- Viewpoints
- Small Nature Trail
- Outdoor Learning Space

OFF-LEASH DOG AREA

- Fenced Dog Park

COMMUNITY GARDEN

- Community Garden Plots
- Storage
- Limited Vehicular Access

ACCESS + CONNECTION

- Walking Paths/Loops
- Improved Bike Access/Connections
- Additional Parking
- Safety Improvements
- Park Lighting
- Inclusive Signage

Bagley Community Park

MASTER PLAN

THE COMMUNITY VISION

This colorful, lively park is a reflection of the variety and vibrancy in this community’s cultures, and there are so many opportunities here for people to have fun and feel a sense of belonging.

Through the center of the park is a wide promenade that acts as a stage for public life -- a linear room for strolling, sitting, playing, and group festivities. Along the promenade are spaces to picnic, play, exercise, and relax. Here, water is celebrated and in our rainy season this site comes to life in fun and interesting ways. A destination play area provides children of all ages a place for wonder and exploration. A large event space is where big groups of people can gather and celebrate. On the park’s outer edges are an off-leash dog area, fitness features and sports courts, a community garden, a flexible lawn, and a large landscape buffer. In the middle of it all sits a lush, restored wetland that offers comfortable spaces to relax, learn, and experience nature.

With all the pieces together, this park acts as a safe and welcoming communal backyard where everyone is invited to relax and have fun.

WHAT HAPPENS NEXT?

This master plan will be built in phases. After the plan is approved by the Parks and Recreation Advisory Commission, permitting and the first phase of construction can begin for the top priorities.

PARK EXPERIENCES



Covered Event Stage/
Group Picnic Shelter



Event Lawn



Park Promenade



Park Promenade Events



Picnic Areas



Entry Plaza



Games Area



Flexible Lawn Areas



Sports Courts



Teen / Adult Fitness



Water Scrim



Cooling Mist Station



Wetland Overlook



Nature Trails



Hangout Space



Play Area



Nature Play Area



Community Garden



Dog Park



Public Art

SCAN HERE TO LEARN MORE



beheardvancouver.org/
bagley

Bagley Community Park

MASTER PLAN: PHASE ONE

PARK DESIGN



MAP LEGEND

Existing Features

- Park Boundary
- Trees
- ~ Creek

Proposed Features

- Trees
- Pathways + Trails
- ▭ Building
- 🚗 Parking
- ▭ Footbridge/Deck
- 🚶 Picnic Area
- Open Space
- ⬭ Wetland Enhancement
- Plaza/Hangout Area
- Play Area
- Flex Space

PROPOSED DESIGN ELEMENTS

ENTRY PLAZA

- Restroom
- Lounge Seating Area
- Games and Hangout Space
- Public Art Installations

EVENT SPACE

- Performance Stage
- Electrical Hookups
- Group Picnic Area
- Flexible Lawn Space

PARK PROMENADE

- Wide Strolling Walkway
- Shaded Areas
- Seating Nodes
- Public Art Installations
- Event Space
- Food Cart Pull-ins
- Playful Features

PLAY AREAS

- Inclusive Children's Play Area
- Playful Elements for All Ages

FLEX SPACES

- Multi-Use and Adaptable Areas
- Pop-up Event Spaces
- Seasonal Activity Zones
- Seating Areas
- Shade Gathering Spots

WATER ELEMENTS

- Rainwater Runnels
- Rain Gardens

OPEN LAWN AREAS

- Pick-up Sports Games
- Picnicking
- Gathering Spaces

PICNIC AREAS

- Picnic Tables
- Shade Trees

WETLAND AREA

- Wetland Enhancement
- Wetland Overlook Deck
- Nature Learning Opportunities
- Wildlife Viewing

WOODLAND AREA

- Invasive Species Removal
- Creation of Safe View Corridors

ACCESS + CONNECTION

- Walking Paths and Loops
- Improved Bike Access and Connections
- Safety Enhancements
- Park Lighting
- Inclusive Signage



**Services Agreement C-101193
Amendment No. 1
Bagley Community Masterplan and Construction Documents**

This first amendment ("Amendment") amends the Professional Services Agreement number C-101193 ("Agreement") between the City of Vancouver, ("City"), and Moore Iacofano Goltsman, Inc., a California corporation ("Contractor") and is effective on the last day signed by a Party. Terms that are capitalized but undefined will have the meaning given them in the Agreement.

This Amendment amends the Agreement as follows:

1. **Section 1 Scope of Work** is amended as follows:

The Contractor agrees to provide the City all services and materials in the scope of work identified in Attachment "A", as amended by Amendment 1 to the Agreement, and as further described in the City's solicitation, and the Contractor's responsive proposal to the City's solicitation, ("work").

2. **Section 2 Compensation** is amended as follows:

Payment to the Contractor for the Services described in this Agreement shall not exceed \$442,350.00USD.

3. **Entire Agreement.** All unamended terms in the Agreement or any earlier amendment remain in full force and effect. This Amendment, together with the Agreement and any earlier amendments, is the entire agreement between the Parties, and supersedes any other agreement or discussion between them, whether written or oral in nature.

A municipal corporation

Signed by:

C084EA446CF9483...
Lon Pluckmann, City manager

6/20/2025

Date

Attest:

DocuSigned by:

493E940414AE4BD...
Natasha Ramras, City Clerk

Approved as to form:

DocuSigned by:

A17C6F7FA2AC4D4...
Mena Cook, City Attorney, City Attorney's Office

Moore Iacofano Goltsman, Inc

Signed by:

AE31FCDFAC704F1...
Signature

Jacob Dumler Principal

Printed Name /Title

6/16/2025

Date

Attachment A

May 28, 2025

Terry Snyder, Landscape Architect
City of Vancouver
Parks and Recreation Services
Vancouver, WA 98660

Subject: Bagley Community Park's Phase 1 Illustrative Graphic

Dear Terry:

We are excited to continue our work with you on Bagley Community Park's design and phasing. As we understand it, the City of Vancouver is requesting an updated site plan illustrative graphic that reflects only the Phase 1 improvement elements. This scope will include the removal (or screening back) of future-phase features, the creation of a new Phase 1 graphic, and the preparation of final materials for public presentation and distribution.

The scope and fee for this work is as follows:

1: Initial File Prep + Strategy (2 hours)

Determine approach for isolating Phase 1 elements and reorganize Illustrator and InDesign files accordingly.

2: Graphic Development (8 hours)

Create a new concept graphic highlighting Phase 1 improvements only.

3: Finalization + Delivery (2 hours)

Review for clarity, coordinate with client, finalize edits, and package files for City Council presentation, website, and print.

4: Project Management + Close-Out (2 hours)

Includes contract amendment, coordination, invoicing, and final documentation.

Total Hours: 14

Hourly Rate: \$165/hour

Total Budget: \$2,310

As always, we thoroughly enjoy working with the City of Vancouver and are really looking forward to getting started on the CDs, permitting, and CA phases together. Please feel free to give Christina Frank a call at 503.348.5201 or contact her via email at christinaf@migcom.com if you have any questions.

Sincerely,



Jacob Dumler
Principal-in-Charge

PLANNING | DESIGN | COMMUNICATIONS | MANAGEMENT | SCIENCE | TECHNOLOGY

811 SW 6th Avenue, Suite 1000 • Portland, OR 97204 • USA • 503-297-1005 • www.migcom.com

Offices in: California • Colorado • Oregon • Texas • Washington

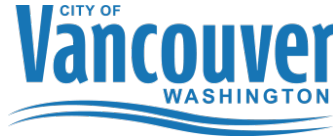
MIG Billing Rates

Below are the current billing rates for key personnel and staff for the 53rd Avenue Park West Construction Observation Services project.

Title	Hourly Rate
Principal-in-Charge	\$210
Project Manager	\$150
Senior Landscape Architect	\$165-\$195
Landscape Architect	\$135
Irrigation Designer	\$155
Project Associate I	\$120
Project Associate II	\$95
Project Accountant	\$155
Administrative Staff	\$120

Direct Costs

Direct costs are not included in the task budgets. Direct costs or project expenses such as photocopying (large quantity), plotting, and printing (black & white or color); communications, including long-distance telephone (excluding cell phones), facsimile, postage, courier, and other delivery costs are charged at cost. Mileage for personal automobiles is charged the current applicable mileage rate established by the Internal Revenue Service and all other travel expenses such as accommodations, parking, tolls, etc. are charged at cost.



CITY OF VANCOUVER
BAGLEY COMMUNITY PARK MASTERPLAN AND CONSTRUCTION DOCUMENTS
SERVICES AGREEMENT
No. C-101193

This Services Agreement (hereinafter referred to as the "Agreement") is entered into by and between the City of Vancouver, Washington, a municipal corporation organized under the laws of the State of Washington, (hereinafter referred to as the "City") and Moore Iacofano Goltsman, Inc., (hereinafter referred to as the "Contractor"). The City and Contractor may be collectively referred to herein as the "parties" or individually as a "party".

WHEREAS, the City desires to engage the Contractor to perform services as described in this Agreement; and

WHEREAS, the City advertised and issued a Request for Qualifications, numbered 46-22 (hereinafter referred to as the "solicitation") and after evaluation of the Contractor's responsive proposal, found the Contractor be capable of performing the required services; and

WHEREAS, the Contractor represents by entering into this Agreement that it is fully qualified to perform the services described herein in a competent and professional manner, and to the full satisfaction of the City.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

- 1. SCOPE OF WORK:** The Contractor agrees to provide the City all services and materials set forth below in the scope of work identified in Attachment "A", and as further described in the City's solicitation, and the Contractor's responsive proposal to the City's solicitation, (collectively referred to herein as the "work") which are each incorporated herein by this reference, and made a part of this Agreement as if fully set forth herein.

All work must be authorized and approved by the City's Project Manager before any work can begin. The Contractor shall approach each project in a manner consistent with its usual customary business practices. The Contractor shall actively seek collaborative input from City staff.

2. **COMPENSATION:** Payment to the Contractor for the work described in this Agreement shall not exceed \$440,040.00 USD.

This payment shall be maximum compensation for the work and for all labor, materials, supplies, equipment and incidentals necessary to complete the work as set forth herein, and it shall not be exceeded without the City's prior written authorization in the form of a negotiated and executed amendment.

Compensation is limited to the amount specified for each specific task and/or sub-task, unless amended in writing. The City requires the Contractor to complete the work stated within the number of hours stated for each task, and/or sub-task, or the lump sum amount. If compensation is made on an hourly basis and the work requires fewer hours than those estimated, the Contractor will be paid for the actual worked hours necessary to complete that task and/or sub-task. If the Contractor underestimated the number of hours required to perform the work, the Contractor shall be paid up to the maximum number of hours stated for the task and/or sub-task. Compensation may be amended, at the City's sole discretion, for documentable circumstances not reasonably foreseeable to either party at the time the task and/or subtask is initiated, or for changes to the scope of work or deliverables requested by the City. All deliverables must be acceptable to the City, at the sole discretion of the City.

Travel expenses are limited to airfare, or mileage at the current IRS rate, and lodging at the U.S. General Services Administration rates. The Contractor is solely responsible for its staff's travel time, including travel to and from the City of Vancouver. The City will reimburse only pre-approved miscellaneous Contractor expenses at-cost upon submission of receipts to City.

3. **PAYMENT FOR CONTRACTOR SERVICES:** The Contractor shall submit monthly invoices to City covering both professional fees and project expenses, if any, for fees and expenses from the previous month. Payments to Contractor shall be net thirty (30) days.

The City reserves the right to correct any invoices paid in error. The Contractor shall be paid according to the rates set forth below in Attachment "B", incorporated herein by this reference, and made a part of this Agreement as if fully set forth herein.

City and Contractor agree that any amount paid in error by City does not constitute a rate change in the amount of the contract. The City's contract/purchase order (PO) number given on the notice to proceed must be referenced on any invoice submitted for payment.

4. **TERM OF AGREEMENT:** The term of this Agreement shall commence on May 1, 2023 and continue until December 30, 2027. Unless directed otherwise by the City, Contractor shall perform the work in accordance with any schedules made a part of this Agreement.

5. **ORDER OF PRECEDENCE:** Where there is a conflict among or between any of these documents, the controlling documents shall be the first listed in the following sequence: Amendments to this Agreement; this Agreement; Contract Purchase Orders; the Contractor's responsive proposal to the City's solicitation, and the City's solicitation.
6. **RELATION OF PARTIES:** The Contractor, and its subcontractors, agents, employees, or other vendors contracted by the Contractor to provide services or other work for the purpose of meeting the Contractor's obligations under this agreement (collectively referred to as "subcontractors"), are independent contractors performing professional services for the City and are not employees of the City. The Contractor and its subcontractors shall not, as a result of this Agreement, accrue leave, retirement, insurance, bonding or any other rights, privileges, or benefits afforded to City employees. The Contractor and its subcontractors shall not have the authority to bind City in any way except as may be specifically provided herein.
7. **SUBCONTRACTING:** The City does not permit subcontractors for the work performed under this Agreement. The Contractor shall not subcontract for the performance of any work under this Agreement without prior written permission of the City.
8. **E-VERIFY:** The Contractor shall enter into and register a Memorandum of Understanding with the Department of Homeland Security E-Verify program within sixty (60) days after execution of this Agreement. The Contractor shall ensure all Contractor employees and any subcontractors assigned to perform work under this Agreement are eligible to work in the United States. The Contractor shall provide verification of compliance upon the request of the City. Failure by the Contractor to comply with this subsection shall be considered a material breach.
9. **DELAYS AND EXTENSIONS OF TIME:** If the Contractor is delayed at any time in the progress of the work covered by this Agreement, by any causes beyond Contractor's control, the time for performance may be extended by such time as shall be mutually agreed upon by the Contractor and the City and shall be incorporated in a written amendment to this Agreement. Any request for an extension of time shall be made in writing to the City.
10. **OWNERSHIP OF RECORDS AND DOCUMENTS:** Any and all work product prepared by the Contractor in the course of performing this Contract shall immediately become the property of the City. In consideration of the compensation provided for by this Agreement, the Contractor hereby further assigns all copyright interests in such work product to the City. A copy may be retained by the Contractor. Previously owned intellectual property of Contractor, and any know-how, methodologies or processes used by the Contractor to provide the services or project deliverables under this Agreement shall remain property of the Contractor.

- 11. TERMINATION FOR PUBLIC CONVENIENCE:** The City, at its sole discretion, may terminate this contract for convenience at any time for any reason deemed appropriate. Termination is effective immediately upon notice of termination given by the City.

In the event this Agreement is terminated prior to the completion of work, the Contractor will only be paid for the portion of the work completed at the time of termination of the Agreement.

- 12. TERMINATION FOR DEFAULT:** If the Contractor defaults by failing to perform any of the obligations of the Agreement, including violating any law, regulation, rule or ordinance applicable to this Agreement, or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the City may, by depositing written notice to the Contractor in the U.S. mail, postage prepaid, terminate the Agreement, and at the City's option, obtain performance of the work elsewhere.

If the Agreement is terminated for default, the Contractor shall not be entitled to receive any further payments under the Agreement 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 the Contractor. The Contractor shall bear any extra expenses incurred by the City in completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for public convenience paragraph herein.

- 13. OPPORTUNITY TO CURE:** The City at its sole discretion may in lieu of a termination allow the Contractor to cure the defect(s), by providing a "Notice to Cure" to Contractor setting forth the remedies sought by City and the deadline to accomplish the remedies. If the Contractor fails to remedy to the City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within the time stated time, the City shall have the right to terminate the Contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against the Contractor and its sureties for said breach or default, including but not limited to termination of this Contract for convenience.

- 14. COMPLIANCE WITH THE LAW:** The Contractor agrees to comply with all relevant, Federal, State, and Municipal laws, rules, policies, regulations or ordinances in the performance of work under this Agreement.

- 15. CITY BUSINESS AND OCCUPATION LICENSE:** The Contractor will be required to obtain a business license when contracting with the City unless allowable exemptions apply. The

Contractor shall contact the State of Washington Business License Service (BLS) at: <http://bls.dor.wa.gov/file.aspx>, or by phone at 800-451-7985, or go to www.bls.dor.wa.gov/cities/vancouver.aspx or www.cityofvancouver.us/businesslicense, to determine whether a business license is required pursuant to the Vancouver Municipal Code (VMC) Chapter 5.04.

16. LIABILITY AND HOLD HARMLESS: The Contractor agrees to indemnify, defend, save and hold harmless the City, its officials, employees and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, of whatsoever kind or nature (including patent infringement or copyright claims) to the extent arising out of, or in connection with, or incident to, the negligent performance or willful misconduct pursuant to this Agreement. This indemnity and hold harmless shall include any claim made against the City by an employee of Contractor or subcontractor or agent even if Contractor is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 Revised Code of Washington (RCW), except to the extent that such liability arises from the concurrent negligence of both the City and the Contractor, such costs, fees and expenses shall be shared between the City and the Contractor in proportion to their relative degrees of negligence. The Contractor specifically acknowledges the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that the Contractor provide the broadest scope of indemnity permitted by RCW 4.24.115. The Contractor is an independent contractor and responsible for the safety of its employees.

17. INSURANCE: The Contractor shall obtain and keep in force during the entire term of this agreement, liability insurance against any and all claims for damages to person or property which may arise out of the performance of this Contract whether such work shall be by the Contractor, subcontractor or anyone directly or indirectly employed by either the Contractor or a subcontractor.

All liability insurance required herein shall be under a Comprehensive or Commercial General Liability and business policies.

COVERAGE	LIMITS OF LIABILITY
I. Commercial General Liability:	
Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability	
Each Occurrence	\$1,000,000
General Aggregate Per Occurrence	\$2,000,000
Products & Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Blanket Contractual Liability	\$1,000,000

II. Commercial Automobile Liability	
Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or Non-owned vehicles used in the operation, installation and maintenance of facilities under this agreement. Combined Single Limit	\$1,000,000
III. Workers' Compensation (applicable to the State of Washington)	
Per Occurrence	
Employer's Liability	\$1,000,000
Disease Each Employee	\$1,000,000
Disease Policy Limit	\$1,000,000
Each Claim	\$1,000,000
Annual Aggregate	\$1,000,000
IV. Umbrella Liability	
Each Claim	\$1,000,000
Annual Aggregate	\$5,000,000

In addition to the coverage and limits listed above the Contractor's insurance must all contain the following:

- a. City Listed as an Additional Insured. The City of Vancouver, its Agents, Representatives, Officers, Directors, Elected and Appointed Officials, and Employees must be named as an additional insured. The required Additional Insured endorsements shall be at least as broad as ISO CG 20 10 11 85, or its equivalent CG 20 10 07 04 and CG 20 37 07 04 must be included with the Certificate of Insurance.
- b. Either the Commercial General Liability or the Workers' Compensation policy must be endorsed to include "Washington Stop Gap" insurance. The limits and aggregates referenced must apply to the Stop Gap coverage as well and must be indicated on the certificate.
- c. Employment Security. The Contractor shall comply with all employment security laws of the State in which services are provided and shall timely make all required payments in connection therewith.
- d. The City of Vancouver shall be listed on the Certificate as the Certificate Holder.
- e. Coverage Trigger: The insurance must be written on an "occurrence" basis. This must be indicated on the Certificate.

Contractor shall provide evidence of all insurance required, at the City's request, by submitting an insurance certificate to the City on a standard "ACORD" or comparable form.

All policies shall be issued by an insurance company licensed to do business in the State of Washington. The City of Vancouver may inspect all policies and copies shall be provided to the City upon request.

- 18. NOTICES:** All notices which are given or required to be given pursuant to this Agreement shall be hand delivered, mailed postage paid, or sent by electronic mail as follows:

For the City:

Anna Vogel

City of Vancouver

415 W 6th Street

P O Box 1995

Vancouver WA 98668-1995

Email: anna.vogel@cityofvancouver.us

For the Contractor:

Jacob Dumbler

Moore Iacofano Goltsman, Inc.

119 Pine Street, Suite 400

Seattle, WA 98101

Email: jdumler@migcom.com

Either party may change the designated contact or any information listed above by giving advance notice in writing to the other party.

- 19. AMENDMENTS:** All changes to this Agreement, including changes to the scope of work and compensation sections, must be made by written amendment and signed by all parties to this Agreement.

- 20. SCOPE OF AGREEMENT:** This Agreement incorporates all the agreements, covenants and understanding between the parties hereto and are merged into this written Agreement. No prior agreement or prior understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless set forth in this Agreement.

- 21. RATIFICATION:** Acts taken pursuant to this Agreement but prior to its effective date are hereby ratified and confirmed.

- 22. GOVERNING LAW/VENUE:** This Agreement shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. Any action or suit brought in connection with this Agreement shall be brought in the Superior Court of Clark County, Washington.

- 23. COOPERATIVE PURCHASING:** The Washington State Inter-local Cooperation Act, Ch. 39.34 RCW, authorizes public agencies to cooperatively purchase goods and services if all parties agree. By having executed this Agreement, the Contractor agrees that other public agencies may

purchase goods and services under this solicitation or contract at their own cost and without the City incurring any financial or legal liability for such purchases. The City agrees to allow other public agencies to purchase goods and services under this solicitation or contract, provided that the City is not held financially or legally liable for purchases and that any public agency purchasing under such solicitation or contract file a copy of this invitation and such contract in accordance with RCW 39.34.040.

- 24. PUBLIC DISCLOSURE COMPLIANCE:** The parties acknowledge that the City is an “agency” within the meaning of the Washington Public Records Act, Chapter 42.56 RCW, and that materials submitted by the Contractor to the City become public record. Such records may be subject to public disclosure, in whole or part and may be required to be released by the City in the event of a request for disclosure. In the event the City receives a public record request for any data or deliverable that is provided to the City and that is licensed from the Contractor, the City shall notify the Contractor of such request and withhold disclosure of such information for not less than five (5) business days, to permit the Contractor to seek judicial protection of such information, provided that the Contractor shall be responsible for attorney fees and costs in such action and shall save and hold harmless the City from any costs, attorney fees or penalty assessment under Chapter 42.17 RCW for withholding or delaying public disclosure of such information.
- 25. DEBARMENT:** The Contractor certifies that that it is not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any Federal, State or local department or agency.
- 26. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT:** Supplier must agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 27. BYRD ANTI-LOBBYING AMENDMENT:** Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Suppliers that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 28. PROCUREMENT OF RECOVERED MATERIALS:** Supplier must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest

percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

29. WARRANTIES: All products shall be warranted against defects or faulty workmanship and materials by the Supplier for one (1) year following inspection and acceptance of the products by the City. Warranty shall include all costs incurred, including shipping, for repair or replacement except that which is damaged by misuse or abuse. This one-(1) year warranty shall in no way affect normal extended or manufacturer's warranty exceeding this one (1) year period. Supplier warrants that all goods and services furnished under this Contract are new, conform strictly to the specifications herein, are merchantable, good workmanship, free from defect, comply with all applicable safety and health standards established for such products, all goods are properly packaged, and all appropriate instructions or warnings are supplied. If a defect is found, a component failure occurs, or workmanship is found to cause failure, the Vendor shall replace the product at their own expense, including shipping charges. Any replacement product will be warranted for one (1) year from the date it is delivered. All implied and expressed warranty provisions of the Uniform Commercial Code are incorporated into this Contract.

30. NONDISCRIMINATION: The City of Vancouver, WA is an equal opportunity employer. In the performance of this Agreement, the Contractor will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, sexual orientation, marital status, age or the presence of any sensory, mental or physical handicap.

The undersigned, as the authorized representatives of the City and Contractor respectively, agree to all of the terms and conditions contained in this Agreement, as of the dates set forth below.

CITY OF VANCOUVER
A municipal corporation

DocuSigned by:


Eric Holmes, City Manager

6/7/2023

Date

Attest:

DocuSigned by:

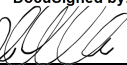

Natasha Ramras, City Clerk

Approved as to form:

DocuSigned by:


Jonathan Young, City Attorney

CONTRACTOR:
Moore Iacofano Goltsman, Inc.

DocuSigned by:

Signature

Jacob Dumler Principal

Printed Name /Title

5/18/2023

Date

Bagley Community Park Master Plan

March 27, 2023

Page 1 of 16



Terry Snyder
City of Vancouver
Parks, Recreation and Cultural Services
360-487-8317
terry.snyder@CityofVancouver.us

RE: Bagley Community Park Scope and Fee for Master Plan (Tasks 1-4) _ Revised

Project Description

The City of Vancouver seeks to redevelop the Bagley Community Park Project, which is a 16.19-acre community park in the Bagley Downs Neighborhood of central Vancouver. It is home to many of Vancouver Parks and Recreation's youth and adult sports leagues. With the decline of softball programs in Vancouver, the City sees an opportunity to consolidate their sports program to another location and opening up Bagley to new park opportunities. The City envisions eliminating all the sports fields and other improvements, with the exception of the parking lot to create a community park that aligns with the vision of Fourth Pain Forward and the needs of the community.

Bagley Community Park will be a multipurpose community park. The Vancouver Comprehensive Parks, Recreation and Natural Areas Plan states: "Community parks provide a focal point and gathering place for broad groups of users. Usually, 20 to 100 acres in size, community parks are used by all segments of the population. Community parks often include recreation facilities for organized activities such as sports fields, skate parks, community gardens, trails and play courts. Because of their larger service area, community parks require more support facilities, including parking and restrooms, and can draw users from a one-half mile to three-mile service area." Bagley Community Park will be constructed consistent with this definition of a community park.

Bagley Park will need to include a new all-inclusive playground with natural and manmade components serving all ages and abilities. The site could also include pathways, wetland /stream enhancements, event space, picnic shelters, restrooms, parking improvements, pickleball, futsal or other non-traditional sport activities plus other general site furnishings. The final program will be determined by the public outreach process.

Through the masterplan process we want to understand the cultural makeup of the community and provide amenities that address their diverse needs and interests.

Upon the completion of the masterplan, a phasing approach may be required based on funding available for construction.

Project Location / Context

The proposed location of the Bagley Community Park is: 4607 Plomondon Street, Vancouver, Washington 98661 and includes three softball fields, two soccer fields, playground, basketball court, restroom, picnic tables, benches, paths, landscaping, and irrigation. It is also the headwaters of Headache Creek. It abuts Vancouver School Districts Eleanor Roosevelt Elementary School, Vancouver School District Parsley Community and Administration Center which contains meeting rooms, swimming pool, and climbing wall. The service area for this project is a half-mile to three-mile radius and serves primarily Bagley Downs, Fourth Plain Village, Meadowhomes and Maplewood neighborhood associations, as illustrated below:

Bagley Community Park Master Plan

March 27, 2023

Page 2 of 16

**Nature of Work**

Task 1-4: Work includes working with the City of Vancouver to provide surveying, special and critical area (wetland, habitat, other) studies, geotechnical work, archeology review, project coordination, master planning and public engagement.

Task 5-7: Will be added as an addendum to the contract at the completion of Tasks 1-4.

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Upon additional funding, the selected MIG team will provide environmental/permitting process review, construction plans and specification, bid and construction support.

Estimated Project Schedule

For this Project, it is estimated that the Notice to Proceed will be given in April 2023 with Task 1-4 items to be complete by December 2023.

Phase 1: MASTER PLAN	Approx. Time Frame	Approx. Dates
Task 1: Project Initiation / Management / Processes	8 months	April '23 to December '23
Task 2: Special Studies / Preliminary Reports / Survey	3 months	April '23 to July '23
Task 3: Public Engagement	8 months	April '23 to December '23
Task 4: Concept Alternatives / Masterplan Processes	7 months	May '23 to December '23

Fee Option Overview

	Description	Fee
PHASE 1	MASTER PLAN	
Task 1	Project Management / Project Initiation / Processes	\$ 43,400
Task 2	Special Studies / Preliminary Reports / Survey	\$ 121,970
Task 3	Public Engagement	\$ 126,260
Task 4	Concept Alternatives / Masterplan Processes	\$ 93,340
	Total Basic Services	\$ 384,970
Additive #1	Wetland Delineation & Assessment	\$ 15,520
Additive #2	Habitat Assessment	\$ 8,715
Additive #3	Tree Survey	\$ 11,335
	Total Add/Alt Services	\$ 35,570

Scope of Services

Phase 1: Master Plan

TASK 1: Project Initiation / Management / Processes

The MIG Team's process begins by reviewing client-provided background information regarding site conditions and program desires related to the project mission and goals. At the same time, we also research local environmental conditions, site history, other local/community background or stories that might inform design. During this phase, base maps are created using site survey data, which can be client-provided or included as part of the Team's scope.

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This task also includes time for the MIG to manage the project, including developing a project schedule and coordinating with the City of Vancouver representative for the duration of the project.

Task 1.1 Project Award and Contract Negotiation

- Attend meeting with the Vancouver Parks staff shall facilitate initial project scoping.

Task 1.2: Project Management

- Develop, maintain, and update an overall project work plan integrating a partnership approach strategy.
- Provide management, coordination, and direction to the Project team in order to complete the project on time and within budget. The City fosters a partnership approach of all stakeholders in the Project.
- Prepare bi-monthly progress reports to be submitted with invoices.
- Schedule Project team meetings and prepare meeting agendas.
- Schedule team project management progress meetings and prepare meeting agendas.
 - Up to (8) hours of PM progress meetings can be configured as needed.
 - Examples: (8) monthly one-hour progress meetings (via Zoom) or (16) bi-weekly half-hour meetings (via Zoom)
- Schedule team project management progress meetings and prepare meeting agendas.
 - Up to (4) hours of additional coordination meetings with City/stakeholders as needed.

Task 1.3: Project Initiation

- Prepare and submit an activities list and schedule to the City following the Notice to Proceed.
- Establish a set meeting schedule with Parks staff and interested parties to discuss and review design and project process.
- Establish a quality management program and designate responsibility for review of technical work and other deliverable products.
- Prepare Project schedule/work plan for Task 1-4 items to identify the major work tasks to be accomplished and the due dates for each task, for Parks staff approval.
- Revise the schedule to reflect changes in the Project milestones and timelines.

Task 1.4: Data Collection/Review

- Research and review available project reports, historical documents, water well logs, subsurface geologic information, and published maps.
- Conduct site visits to document and map existing conditions and obtain ground-level photographs to prepare a site assessment.
- Review the existing conditions and project elements with City staff.

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- Prepare a site analysis of the park and its relationship to off-site conditions and circulation.

Task 1.5: Project Coordination

- Schedule coordination/review meetings with key Parks staff and project MIGs throughout the duration of this project to allow for communications, to facilitate the continued exchange of relevant project information, and to provide frequent opportunity for review and comment on the MIG team's services.
- Organize and hold Project meetings with key Project team members, as well as representatives from the City of Vancouver and other agencies as needed.
 - Prepare specific agendas addressing and resolving Project issues as they are encountered.

Task 1 General Assumptions

- MAPS AND DATA: Any and all costs associated with the purchase of data or maps are the responsibility of MIG.
- The MIG will be responsible for producing topographic survey.
- The City will coordinate with property owners adjacent to the Project who will be affected by the park design to notify owners and residents of activities.

Task 1 General Deliverables

- Meeting Minutes
- Bi-Monthly progress report and invoices
- Project Schedule & Schedule Updates

TASK 2: Special Studies / Preliminary Reports / Survey

MIG's MIG team will provide the City and design team with base materials and scientific data on which to build the conceptual design as informed by the Public Engagement process.

Task 2.1 Critical Areas Studies

Headache creek in the NW portion of the site is a stream that does flow year-round. The creek will need to be surveyed and classified and any wetland boundaries associated with it identified.

- Herrera Environmental will perform the following:
 - Creek /Wetlands
 - Perform desktop analysis of wetland presence and natural water courses.
 - Prepare for field investigation.
 - Conduct field investigation, including delineation of ordinary high-water mark and performing wetland reconnaissance to identify potential presence of wetlands.

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- Document methods and results in Task Critical Areas and Hydrology Report
 - Habitat
 - Perform desktop analysis of wetland presence and natural water courses.
 - Prepare for field investigation.
 - Conduct field investigation, including broad classification of vegetation communities. Make notation of wildlife species or signs observed including birds, mammals, and amphibians.
 - Deliverables
 - Critical Areas and Hydrology Report (PDF)
 - Additive #1: Task 2.1.1 Wetland Delineation and Assessment
 - If wetlands are present, perform formal wetland delineation and functional assessment.
 - Document methods and results in Task Critical Areas and Hydrology Report
 - Additive #2: Task 2.1.2 Habitat Assessment
 - Prepare for field investigation.
 - Perform targeted survey for any listed species expected in the area.
 - Document methods and results in Critical Areas and Hydrology Report
- Deliverables
 - Document methods and results in Critical Areas and Hydrology Report

Task 2.2 Hydraulics, Hydrology, Water Resources, and Water Quality

- Herrera Environmental will perform the following:
 - Collection of available data relating to the drainage and water resources for the Project area and reviews from Federal, State, and local agencies.
 - Incorporation of existing and proposed drainage features and information on drainage problem areas shall be incorporated into the Project plan and profile sheets, along with establishing groundwater elevations.
 - Preparation of a preliminary Hydrology Report shall be prepared containing all drainage calculations for the Project.
 - Perform desktop analysis of all existing stormwater infrastructure within the park including the historic ditch and any known water quality issues including downstream TMDLs.
 - Prepare for field reconnaissance.
 - Conduct field reconnaissance to verify or characterize stormwater infrastructure.
 - Document methods and results in Critical Areas and Hydrology Report
- Deliverables
 - Hydrology Report:

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- Two (2) copies, draft and final, shall be submitted for City review and comment. (PDF)
- Three (3) copies of the final report shall be submitted when revised. (PDF)

Task 2.3 Geotechnical Report

- Geotechnics will perform the following:
 - Arrange for all required utility location marking. All geotechnical soil samples shall be collected and labeled for laboratory testing. The MIG shall provide percolation data where infiltration facilities are proposed.
 - Perform all necessary laboratory tests for stability, settlement, and foundation designs.
 - Prepare a draft Geotechnical Report summarizing all results of the field exploration and laboratory testing program and analysis results, conclusions, recommendations, and comments. Two (2) copies shall be submitted to the City for review and comment.
 - Incorporate review comments into the Geotechnical Report.
- Deliverables
 - Geotechnical Report: Three (3) copies of the final report shall be submitted to the City. (PDF)

Task 2.4 Archeology

- Willamette Cultural Resource Associates will perform the following:
 - Provide an archeological pre-determination for the site. If the pre-determination finds reasons for additional field work and reporting that will be added to the project.
 - Submit information to Washington State as appropriate.
- Deliverables
 - Archaeological Assessment / Pre-Determination Reports (PDF)

Task 2.5 Survey

- Minister-Glaeser Surveying Inc. (MGS) will perform the following:
 - MGS will provide topography survey of existing conditions that includes all man-made materials, trees, grades, wetland boundaries, creek, roads, utilities, etc., as needed to fully develop plans and specifications for the project.
 - Services will include:
 - Project survey
 - Processing of data, computation of boundary, preparation of mapping
 - Two-person field crew to collect field data per the City of Vancouver specifications.
 - Utility Locates
 - APS locating

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- Title Report: WFG National Title
- Fees: County survey recording fee
- Deliverables
 - Topographic Survey (PDF)

Additive #3: Task 2.6 Tree Survey

- Herrera Environmental will perform the following:
 - Develop a tree report that will be used for permitting that identifies trees to be saved and those impacted by this project.
 - Prepare for tree survey.
 - Conduct a tree survey (size, type, condition) of all trees over 6" DBH in the park. Data collected will include GPS locations, tree genus and species, diameter at breast height, and Tree Category per VMC 20.770.120.
 - Tag each tree with a number for the surveyor to pick up.
 - Document methods and results in Arborist Report.
 - Assumptions:
 - All GIS layers and as-builts will be provided by the City and/or MIG.
 - Feedback will be provided by the City Project Manager within ten (10) days of the meeting/presentation/submittal /submittal by MIG.
 - The City will provide comments on deliverables in a single comment document.
 - Deliverables:
 - Tree Report: Draft and Final Arborist Report (PDF)

TASK 3: Public Engagement

The City desires to foster a partnership approach with all Project stakeholders. The stated purpose of the Public Community Engagement Program is:

- To develop an environment of trust between the City, citizens and businesses who are directly and indirectly affected by the Project.
- To give citizens and businesses timely opportunities to comment upon various aspects of the Project as the work progresses.
- To provide information about public attitudes and issues related to the Project.
- To facilitate public meetings and provide logical and easily understood information to the public.
- To define and implement an ongoing public information program directed toward an outreach effort which will answer questions and provide a direct link between the community and the technical data created by the consulting team.

Community Engagement Activities will include:

- Public community meetings as a critical part of the public engagement strategy and provide an opportunity for community members, interested parties, and partners an

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opportunity to provide their input on the project process and concepts. By centering the project on the needs of the community and including them in the design of the park ensures buy-in and transparency.

- Pop-Up Events are particularly useful for targeting areas, communities, and/or groups that are participating less in planning and design processes or that are historically underserved or underrepresented in traditional public engagement. Pop-up activity opportunities will supplement the traditional community workshops and focus group discussions. They are used to engage with key underserved and disadvantaged communities identified by the team and partners.

These will be provided through the following sub-tasks:

Task 3.1: Project Kick-off Day

- The MIG team will lead an in-person day:
 - Logistics meeting with City 10am-11am
 - Up to (8) MIG Team Members, City Staff.
 - Site Walk 11am-12pm
 - Up to (8) MIG Team Members, City Staff.
 - Targeted Stakeholder Visioning Session, 1pm-2:30pm
 - Up to (5) MIG Team Members, City Staff, community stakeholder members and partners as identified by City.
 - The MIG team will provide a brief presentation where participants will be introduced to the project and encouraged to share their vision and discuss issues and opportunities with City staff and the MIG team.
- Assumptions:
 - The City will identify the community stakeholder members and partners who will participate in the Targeted Stakeholder Visioning Session.
- Deliverables:
 - Meeting agenda and notes (PDF)

Task 3.2: Community Meeting #1 – Vision and Opportunities

- Up to (5) MIG team members will lead a 2 hour in-person community visioning meeting with the larger community.
- The MIG team will provide a brief presentation where participants will be introduced to the project and encouraged to share their vision and discuss issues and opportunities with City staff and the MIG team.
- Present an Opportunities and Constraints Diagram based on the findings from Task 2.
- As part of a preliminary community visioning survey, follow-up questions will be provided to City to be posted as an online survey.
- Assumptions:
 - The City will invite the larger community to participate in this meeting.
- Deliverables:

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- Site Opportunities and Challenges Analysis diagrams (PDF)
- Summary of Community Engagement Outcomes.

Task 3.3: Community Meeting #2: Community Design Workshop

- Up to (5) MIG team members will lead a ½ day in person community Design Workshop meeting with the larger community.
- Concept Development: Following the stakeholder meeting, public survey and needs assessment, the MIG team will take all feedback and develop three Master Plan concepts. These will be reviewed by City staff prior to presentation to the public at the first public community meeting.
- Present 2-3 Initial Concepts: The MIG team will use the comments and feedback received at the presentation of the concept plans (Meeting #1) to develop 2-3 concepts.
- Feedback will be asked using interactive and engaging methods.
- **Assumptions:**
 - The City will invite the larger community to participate in this meeting.
- **Deliverables:**
 - 2-3 Initial Design Concepts and Precedent Graphics (PDF)
 - Summary of Community Engagement Outcomes.

Task 3.4: Community Meeting #3: Presentation of Preferred Concept

- Up to (5) MIG team members will lead a ½ day in person community Design Workshop meeting with the larger community.
- The MIG team will use the comments and feedback received at the presentation of the concept plans (Meeting #2) to refine a single concept.
- This preferred concept will be brought back to the community to confirm the direction.
- **Assumptions:**
 - The City will invite the larger community to participate in this meeting.
- **Deliverables:**
 - Final Design Concept and Supporting Graphics (PDF)
 - Summary of Community Engagement Outcomes.



Task 3.5: Online Community Surveys

- After each Community Engagement Meeting, follow-up questions will be provided to City to be posted as an online survey.
- The MIG will provide survey questions to the City (1) to be posted as the Preliminary Community Visioning Online Survey.
- (2) additional Online Surveys following Community Engagement Meetings #2 and 3 will be provided to City to be posted as an online survey.
- The MIG will utilize a survey platform such as Lime Survey, Maptionnaire, or similar, to provide an online survey platform to gather information from the larger community.
- MIG to review and analyze survey data for use by design team.
- **Assumptions:**
 - The City will post a link to the survey questions on their website.
 - The City will provide translation services.
- **Deliverables:**
 - (3) rounds of Survey questions for review (PDF)
 - Online survey platform.
 - (3) uploads of Survey Questions to online survey platform.
 - Report of survey findings.

Task 3.6: Door-to-door outreach

- The MIG will create a fact sheet about the project that also includes where residents can get more information about the Bagley Project.
- **Assumptions:**
 - Factsheet will include link to Survey Platform.
 - The City will deliver fact sheets to apartment managers.
 - The City will deliver fact sheets to apartment managers.
 - The City will provide translation into other languages.
- **Deliverables:**
 - (3) Fact sheets (PDF)

Task 3.7: Public Engagement Toolkit

- The MIG team will create a mix of tools and activities for use by the MIG team and collaborators to provide a wide range of opportunities to allow community members to participate in the master planning process.
- The design team will attend 6 pop-up events in coordination with other on-site meetings/activities.
- **Assumptions:**
 - The City will work with MIG team to coordinate three of the pop-up events with the Community Meetings.
 - Additional pop-up events will be provided by the City and/or community groups using the toolkit provided by MIG.

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- The City will provide intercept activities at community events and key locations happening around the City during each phase of the project as opportunities to meet people where they are and engage them in regard to their needs and visions. Interactive opportunities including, for example, a QR code link to the survey, maps, and posters for adding comments and dot-voting activities will be provided for community members to discuss potential project ideas like greenspace configuration, inclusive play opportunities, needed amenities, etc., and to provide input and feedback.
- **Deliverables:**
 - Community engagement tools and activities as determined by MIG team and based on community needs.

Task 3.8: Website

- The MIG team will provide content to upload to the City's project webpage.
- **Assumptions:**
 - The City will provide and maintain the webpage.
 - The City will monitor comments and survey results, consolidate responses, and deliver them to MIG on a bi-weekly basis.
- **Deliverables:**
 - Web Page content

Task 3 General Assumptions

- The City will take the lead on coordinating venues for the public community meetings.
- The MIG team will prepare meeting materials, display boards, and print outs as agreed on by City staff.
- The MIG team will prepare a PDF of the mailer with the City leading the printing and mailing for both public community meetings.
- The City staff will provide venues and attend the public community meetings.
- Feedback will be provided by the City of Vancouver Project Manager within ten (10) days of presentation.
- The City will provide translation into other languages.
- The City will provide publicity through social media, news releases, advertisements, and flyers.

TASK 4: Concept Alternatives / Masterplan Processes

Using the information gleaned from Tasks 2 and 3, this task shall include preparation of preliminary concept plans and preparing final masterplan, complete with cost estimates.

Task 4.1: Community Meeting #1 – Stakeholder Visioning Meeting

- Create Base Maps.
- Prepare agenda.

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- Facilitate a Virtual Stakeholders Visioning Meeting utilizing the MIRO platform to convey and record information.
- **Deliverables:**
 - Agenda and meeting notes.

Task 4.2: Community Meeting #2 – Community Design Workshop

- Programmatic/Design Workshop (in-house w/ full design team)
- Prepare 2-3 preliminary concept plans or alternatives that meet the program elements identified in the initiation phase and preliminary public outreach of the project.
- MIG will provide initial drafts of the Concept Plans to the City for review. The City will provide consolidated feedback for the MIG to finalize the initial Concept Plan options for use in the public outreach.
- Review the preliminary concept plans with City staff for review and make changes as directed by City staff.
- Prepare colored preliminary concepts for presentation at Community Design Workshop.
- **Deliverables:**
 - 2-3 Color Mounted Concept Alternative Plans
 - Provide both PDF and AutoCAD digital files of the Alternatives to the City.

Task 4.3: Community Meeting #3 – Community Design Preferred Concept Presentation

- The MIG team will use the community input and feedback received at the presentation of the concept plans at Meeting #2 to develop a final preferred concept plan which meets the program elements addressed in the initiation phase of this project and public engagement.
- Prepare a draft cost estimate of the Master Plan. Costs shall be broken down to unit cost and quantities that can be used in a possible phased improvement to Bagley Community Park. i.e., concrete, lights, benches, grading, seeding, parking, structures, each utility, landscaping, irrigation, play area, etc.
- Review the preferred concept plan with City staff.
- Upon receiving final comments from the public and City staff, MIG will make final changes that will be incorporated into the final Master Plan.
- **Deliverables:**
 - Preferred Master Plan Concept (full-sized, color-mounted plan, AutoCAD file, and PDF)
 - Color Mounted Preferred Concept Plan
 - Provide both PDF and AutoCAD digital files of the Preferred Concept to the City.
 - Draft cost estimate of the Preferred Concept.
 - Color Mounted Master Plan.
 - Provide both PDF and AutoCAD digital files of the Master Plan to the City.

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**Task 4.4: Final Master Plan**

- Deliver draft of final Master Plan to City Staff.
- Make minor adjustments to Master Plan as directed by City staff.
- Prepare final rendered site Master Plan (mounted and laminated) based on the final comments.
- Prepare a final detailed cost estimate of the Master Plan. Costs shall be broken down to unit cost and quantities that can be used in a possible phased improvement to Bagley Community Park. i.e., concrete, lights, benches, grading, seeding, parking, structures, each utility, landscaping, irrigation, play area, etc.
- Review the Master Plan and cost estimate with Parks staff. Parks staff will present it to the Parks and Recreation Advisory Commission (PRAC) for their approval. MIG will not proceed with the next task until PRAC approval is achieved.
- **Assumptions:**
 - The Master plan shall incorporate all program elements and preferred alternatives developed during the concept phase.
 - The Concept Plans will contain enough information to explain the general form, content, and quality of the design, including:
 - Statements describing the vision for the site.
 - Short narrative descriptions that characterize the key features, unique aspects, visitor experience, program elements, and operations
 - Graphic illustrations and precedent design images to support the concept plan.
 - All concept adjustments based on community and City comments to be made prior to final rendering of the Master plan.
 - Feedback will be provided by the City of Vancouver Project Manager within ten (10) days of presentation by MIG.
- **Deliverables:**
 - PDF and AutoCAD digital files of the Finalized Master Plan.
 - Full size, color mounted Master Plan.
 - Master Plan document (PDF).
 - Summary of Community Engagement Process.
 - Finalized Master Plan.
 - Finalized Cost Estimate of the Master Plan.
 - Phasing Plan.

General Assumptions

- All meetings will be held remotely (via Zoom, Microsoft Teams, or Google Meet) unless noted otherwise.
- All deliverables will be provided as draft and final, unless noted otherwise. MIG team will incorporate one round of comments based on draft to produce final.

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- The City will provide comments, consolidated into one email or document for each review cycle in a timely manner.
- The City to arrange meeting sites and facilities for in-person meetings, including all public outreach and stakeholder events.
- The City will post fliers, send mailers, post to social media, and/or provide other means necessary to announce, promote and foster participation in public and stakeholder engagement for the project.
- The City will provide furnishings and refreshments at events as needed.
- MIG Team will provide project materials posters, display boards, easels, and other typical office supplies needed for public outreach activities.
- The City will coordinate and ensure access to the project sites for MIG team members, as necessary.
- The City will serve as primary point of contact and coordinate communications as necessary with City staff, stakeholder organizations and individuals, and members of the public.
- For each of the 3 rounds of meetings with the City Council, the Planning Commission, and the Parks & Community Engagement Advisory Board, meetings with each will be scheduled within a 3-day period, otherwise MIG team may need to attend remotely or designate alternative MIG attendee.

Fee Option Selection

Proposed Fee Summary:

	Description	Fee
PHASE 1	MASTER PLAN	
Task 1	Project Management/Project Initiation	\$ 42,400
Task 2	Special Studies / Preliminary Reports / Survey	\$ 121,970
Task 3	Public Engagement	\$ 126,260
Task 4	Concept Alternatives / Masterplan Processes	\$ 93,340
	Total Basic Services	\$ 384,970
Additive #1	Wetland Delineation & Assessment	\$ 15,520
Additive #2	Habitat Assessment	\$ 8,715
Additive #3	Tree Survey	\$ 11,335
	Total Additive Services	\$ 35,570
	Estimated Reimbursable Expenses	\$ 19,500
	Total Services	\$ 440,040

Lump Sum not to exceed. For the services described above, the City of Vancouver shall pay MIG at the lump sum set forth above, plus expenses.

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Please review the attached scope. In the event the City of Vancouver authorizes MIG to commence services prior to the City of Vancouver’s execution of this Agreement, the City of Vancouver’s authorization to commence services shall constitute an acceptance of the terms and conditions of this Agreement. We look forward to collaborating with you.

Sincerely,

A handwritten signature in blue ink that reads "Audrey West."

Audrey West, Project Manager
Director of Landscape Architecture
MIG

ACCEPTED:

Name: _____

Print Name: _____

Title: _____

Date: _____

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Bagley Community Park

MASTER PLAN

PARK DESIGN



MAP LEGEND

Existing Features

- Park Boundary
- Trees
- ~ Creek

Proposed Features

- Trees
- Pathways + Trails
- ▭ Building
- 🚗 New Parking
- 🏠 Picnic Area
- 🌿 Open Space/Events
- 🌊 Wetland Restoration
- 🌳 Community Garden
- 💧 Water Feature
- 🎮 Play Area
- 🏀 Sports/Fitness
- 🎲 Games/Hangout Space

PROPOSED DESIGN ELEMENTS

ENTRY PLAZA

- Restroom
- Lounge Seating Area
- Games/Hangout Space
- Public Art

EVENT SPACE

- Event space for 1000+ people
- Covered Performance Stage
- Group Picnics
- Outdoor Classroom
- Flexible Lawn Space

PARK PROMENADE

- Wide Strolling Walkway
- Events
- Food Cart Space/Pull-ins
- Public Art

FITNESS + SPORTS

- Teen/Adult Fitness Features
- Basketball Court
- Futsal Court
- Hangout Space

PLAY AREAS

- Inclusive Children's Play Area
- Nature Play Area

WATER FEATURES

- Water Play Channel
- Cooling Mist Station
- Rainwater Runnel

FLEXIBLE LAWN AREAS

- Pick-up Sports Games
- Picnicking
- Gathering

PICNIC AREAS

- Picnic Shelters
- Cooking Amenities + Utilities
- Picnic Groves

WETLAND AREA

- Wetland Restoration
- Wetland Overlook Deck
- Nature Learning
- Wildlife Viewing
- Outdoor Learning Space

WOODLAND AREA

- Wetland Restoration
- Viewpoints
- Small Nature Trail
- Outdoor Learning Space

OFF-LEASH DOG AREA

- Fenced Dog Park

COMMUNITY GARDEN

- Community Garden Plots
- Storage
- Limited Vehicular Access

ACCESS + CONNECTION

- Walking Paths/Loops
- Improved Bike Access/Connections
- Additional Parking
- Safety Improvements
- Park Lighting
- Inclusive Signage

Bagley Community Park

MASTER PLAN

THE COMMUNITY VISION

This colorful, lively park is a reflection of the variety and vibrancy in this community’s cultures, and there are so many opportunities here for people to have fun and feel a sense of belonging.

Through the center of the park is a wide promenade that acts as a stage for public life -- a linear room for strolling, sitting, playing, and group festivities. Along the promenade are spaces to picnic, play, exercise, and relax. Here, water is celebrated and in our rainy season this site comes to life in fun and interesting ways. A destination play area provides children of all ages a place for wonder and exploration. A large event space is where big groups of people can gather and celebrate. On the park’s outer edges are an off-leash dog area, fitness features and sports courts, a community garden, a flexible lawn, and a large landscape buffer. In the middle of it all sits a lush, restored wetland that offers comfortable spaces to relax, learn, and experience nature.

With all the pieces together, this park acts as a safe and welcoming communal backyard where everyone is invited to relax and have fun.

WHAT HAPPENS NEXT?

This master plan will be built in phases. After the plan is approved by the Parks and Recreation Advisory Commission, permitting and the first phase of construction can begin for the top priorities.

PARK EXPERIENCES



SCAN HERE TO LEARN MORE



[beheardvancouver.org/
bagley](https://beheardvancouver.org/bagley)

Parque Comunitario de Bagley

EL PLAN MAESTRO

DISEÑO PREFERIDO



LEYENDA

Elementos Existentes

- Límite del Parque
- Árboles
- ~ Arroyo

Elementos Propuestos

- Árboles
- Caminos + Senderos
- Edificio
- 🚗 Nuevo Estacionamiento
- 🏠 Área de Picnic
- 🌿 Espacio Abierto/Eventos
- 💧 Restauración de Humedales
- 🌱 Jardín Comunitario
- 💧 Elemento de Agua
- 🎮 Área de Juegos
- 🏀 Deportes/Ejercicios
- 👥 Juegos/Espacio Social

ELEMENTOS DE DISEÑO PROPUESTOS

PLAZA DE ENTRADA

- Baños
- Área de descanso con asientos
- Espacio para juegos/espacio social
- Arte pública

ESPACIO PARA EVENTOS

- Espacio para eventos grandes
- Escenario techado
- Picnics grupales
- Aula al aire libre
- Área verde flexible

PASEO DEL PARQUE

- Camino ancho para pasear
- Eventos
- Carritos de comida
- Arte pública

EJERCICIO + DEPORTES

- Equipos para jóvenes/adultos
- Cancha de básquet
- Cancha de fútbol
- Espacio social

ÁREAS DE JUEGO

- Área de juegos inclusiva para niños
- Área de juegos naturales

ZONAS CON AGUA

- Canal de juegos acuáticos
- Estación de nebulización para refrescarse
- Canal de agua de lluvia

ÁREAS VERDES FLEXIBLES

- Partidos informales
- Picnics
- Reuniones

ÁREAS DE PICNIC

- Zonas techadas para picnic
- Parrillas y servicios
- Zonas con árboles para picnic

HUMEDALES

- Restauración del humedal
- Mirador y cubierta
- Aprendizaje sobre la naturaleza
- Observación de vida silvestre
- Espacio de aprendizaje al aire libre

ÁREA DE BOSQUE

- Restauración del humedal
- Miradores
- Sendero natural pequeño
- Espacio de aprendizaje al aire libre

ÁREA PARA PERROS SIN CORREA

- Parque cerrado para perros

HUERTO COMUNITARIO

- Jardines individuales
- Almacenamiento
- Acceso vehicular limitado

ACCESO + CONEXIÓN

- Senderos/circuitos para caminar
- Mejor acceso/conexiones para bicicletas
- Estacionamiento adicional
- Mejoras de seguridad
- Iluminación del parque
- Señalización inclusiva

Parque Comunitario de Bagley

EL PLAN MAESTRO

LA VISION DE LA COMUNIDAD

Este parque colorido y animado refleja la variedad y energía de las culturas de esta comunidad, y ofrece un montón de oportunidades para que la gente se divierta y se sienta parte del lugar.

Por el centro del parque hay un paseo amplio que funciona como escenario de la vida pública -- un espacio lineal para caminar, sentarse, jugar y celebrar en grupo. A lo largo del paseo hay áreas para hacer picnic, jugar, ejercitarse y relajarse. Aquí se celebra el agua, y en la temporada de lluvias este lugar cobra vida. Un área de juegos especial ofrece a niños de todas las edades un lugar para maravillarse y explorar. Hay un gran espacio para eventos donde grupos grandes pueden reunirse y celebrar. En los bordes del parque hay un área para perros sin correa, equipos de ejercicio y canchas deportivas, un huerto comunitario, y un área verde flexible. En medio de todo esto se encuentra un exuberante humedal restaurado que ofrece espacios cómodos para relajarse.

Con todas estas partes juntas, este parque actúa como un patio trasero comunitario acogedor, donde todos están invitados a relajarse y divertirse.

¿QUÉ PASA AHORA?

Este plan se construirá por etapas. Después de que la Comisión Asesora de Parques y Recreación apruebe el plan, se podrá empezar con los permisos y la primera fase de construcción de las prioridades principales.

EXPERIENCIAS EN EL PARQUE



ESCANEE AQUÍ PARA APRENDER MÁS



beheardvancouver.org/
bagley

Staff Report: 201-25

To: Mayor and City Council
From: City Manager
Date: October 6, 2025

Subject

Vancouver Fire Department Station #8 Seismic Upgrade – General Contractor/Construction Manager Contract Approval – INLINE Commercial Construction, dba INLINE

Key Points

- An extensive and competitive request for qualifications and request for final proposals process was completed. The final two components of the competitive selection process, as part of the request for final proposals (RFFP), included bid amounts for the contractor's fee percentage and fees for specified general conditions.
- This action allows the City to enter into contract and engage in preconstruction services, with INLINE Commercial Construction for the Vancouver Fire Department (VFD) Station #8 Seismic Upgrade, in accordance with the original Request for Qualifications (RFQ) and RFFP process.
- The negotiated value of preconstruction services will be billed hourly, with a not to exceed value of \$221,220. Compensation for Specified General Conditions will be a fixed fee in the amount of \$909,920.
- The Contractor's fee percentage, as bid during the RFFP process, will be 2.98% of the (MACC) maximum allowable construction cost, and will be added as an addendum to this contract once the MACC is established, following bidding.

Strategic Plan Alignment

Safe and Prepared Community – a safe place to live, work, learn and play

Climate and Natural Systems – environmental stewardship and efforts to address climate change to ensure a sustainable future

High Performing Government – a government that is reliable, fiscally responsible, equitable, and open to compromise

Present Situation

The GCCM (General Contractor/Construction Manager) project delivery method allows the project team to engage the general contractor during the preconstruction design phases to collaborate with the design team and leverage construction expertise in project programming, design, cost estimating, selection and ordering of materials/equipment, quality control, constructability review, risk management, and alignment with schedule and budget.

Procuring the general contractor early will give the project team the opportunity to begin executing the phased construction and procuring materials with long lead times or supply chain challenges. The contractor will develop and execute a subcontractor engagement plan to maximize participation from the City's local contracting community, including minority and women-owned businesses, which leads to better competition and makes strides toward the City's goals.

Specified General Conditions, a fee requested with the final proposals, covers all contractor staff costs associated with executing the general conditions through the construction and closeout phase of the project, including administration of the subcontracting plan, cost accounting, progress scheduling, project meetings, safety plan, quality control, and warranties. This will be paid monthly with the start of physical construction.

The Contractor's Fee, which was a component of the final request for proposals, is calculated as a percentage (2.98%) of the (MACC) Maximum Allowable Construction Cost. The MACC is determined by the direct cost of work, following bidding, plus design/estimating contingency, subcontractor bonding, equipment and escalation. This fee covers both overhead and profit for the contractor for the life of the project.

We anticipate we will have multiple contract amendments, as we go through design, for early procurement of anticipated long lead items and phased construction and a final contract amendment for the final MACC amount.

Advantage(s)

Allows the City to procure the most qualified general contractor for the project using the GCCM process and adds value through real-time cost data analysis, risk management, and value delivery.

Challenge(s)

Potential impact of tariffs and supply chain on products and construction materials necessary for the project completion.

Budget Impact

The contract value, which includes fees for preconstruction services, specified general conditions, and contractor's fee percentage, which was competitively bid, is in alignment with expected costs for these services. The 2025-2026 Biennium Budget for this project includes allocations for these costs.

Prior Council Review

- General Contractor and Construction Manager Contracting Approach - January 22, 2024
- Contract Award – Agreement Between City of Vancouver and LSW Architects for Fire Station 8 Design – RFQ 50-24 - March 3, 2025
- Resolution M-4155 authorizing presenting Proposition 2 to the public
- Vancouver Fire Department's annual report to Council on fire and emergency medical services
- 2025-2026 City of Vancouver Biennial Operating and Capital Budget discussion

Action Requested

On Monday, October 6, 2025, authorize the City Manager, or designee, to enter into a preconstruction services contract with INLINE Commercial Construction of Aloha, OR with an hourly, not to exceed amount of \$221,200 and fixed fee specified general conditions of \$909,920.

Staff Contact

Lam Vuong, Facilities Capital Projects Manager, Lam.Vuong@cityofvancouver.us

Attachments:

1. Inline Contract-Final



AIA® Document A133® – 2019

**Standard Form of Agreement Between Owner and Contractor
as Constructor** where the basis of payment is the Cost of
the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of [REDACTED].

(In words, indicate day, month, and year.)

BETWEEN the Owner:

(Name, legal status, address, and other information)

City of Vancouver

and the Contractor:

(Name, legal status, address, and other information)

Inline Commercial Construction, DBA Inline
18880 SW Shaw Street
Aloha, OR 97078

for the following Project:

(Name, location, and detailed description)

Fire Station 8, 213 NE 120th Avenue, Vancouver WA 98684
Seismic Upgrades

The Architect:

(Name, legal status, address, and other information)

LSW Architects
610 Esther Street, Ste 200
Vancouver WA 98660

The Owner and Contractor agree as follows.

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EXHIBIT A GMP AMENDMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's preliminary program information is as set forth in the Request for Proposal. The Contractor shall work with the Owner and Architect to further develop and comply with the Owner's program requirements.

§ 1.1.2 **N/A**

§ 1.1.3 The Owner's preliminary budget for the GMP is as follows:

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

- .1 Design phase milestone dates:
- .2 Construction Milestone Dates:

§ 1.1.5 The Owner anticipates that, to meet the desired schedule identified above, the Project may utilize all, or any combination of multiple GMPs for early procurement and/or early construction phases, early grading and foundation permits, and phased construction.

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

TBD

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere.)

TBD

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:

(List name, address, and other contact information.)

Lam Vuong, PO Box 1995, Vancouver WA 98668-1995, lam.vuong@cityofvancouver.us

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Contractor's submittals to the Owner are as follows:

(List name, address and other contact information.)

OAC, Alec Weintraub, 2200 1st Avenue S, Suite 200, Seattle WA 98134, 425-503-0810, aweintraub@oacsvcs.com

§ 1.1.10 The Owner shall retain the following consultants and contractors:

(List name, legal status, address, and other contact information.)

§ 1.1.11 The Architect's representative:

(List name, address, and other contact information.)

LSW Architects, Chris Spurgin, 610 Esther St Ste 200, Vancouver WA 98660, 360-694-8571, chris@lsw-architects.com

§ 1.1.12 The Contractor identifies the following representative (the "Contractor's Designated Representative") in accordance with Article 3:

(List name, address, and other contact information.)

Inline Commercial Construction, Jordan Fell, 503-642-5117, jordanf@inline-cc.com

§ 1.1.13 The Owner's requirements for the Contractor's Preconstruction Work Plan:

(List any Owner-specific requirements to be included in the staffing plan.)

See Specification Section 00 50 07 (SCOPE OF WORK FOR PRECONSTRUCTION SERVICES).

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

(List any Owner-specific requirements for subcontractor procurement.)

All subcontracts shall be procured in conformance with the requirements of Washington State law, including but not limited to RCW 39.10.380, this Agreement, and the agreed upon Subcontracting Plan. The Owner and Contractor will discuss whether to select certain Subcontractors under the requirements of RCW 39.10.385.

§ 1.1.15 Other Initial Information on which this Agreement is based:

TBD

§ 1.2 The Owner and Contractor may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Contractor shall appropriately adjust the Project schedule, the Contractor's services, and the Contractor's compensation. The Owner shall adjust the Owner's budget for the GMP and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

ARTICLE 2 GENERAL PROVISIONS

§ 2.0 Definitions

§ 2.0.0 These Definitions are often shorthand references to more formal definitions elsewhere in the Contract Documents. When a defined term is described elsewhere in the Contract Documents, the more descriptive definition shall control over any general description in this Section 2.0.

§ 2.0.1 The **Agreement** is this revised A133-2019 Agreement between Owner and Contractor. All references to the Agreement or the A133 in the Contract Documents are to this revised document.

§ 2.0.2 An **Allowance** is a stated amount included in the GMP for a stated part of the Work that is not fully defined and/or quantified at the time the GMP is established. When that part of the Work is adequately defined and/or quantified, the GMP will be adjusted to account for the difference between the Allowance and the actual or estimated Cost of the Work for that item in an amount that is mutually agreeable to the Owner and Contractor. Following the adjustment, that part of the Work will no longer be an Allowance item.

§ 2.0.3 An **Application for Payment** is described in Section 9.3 of the revised General Conditions and Section 11.1 of this Agreement. An Application for Payment is generally a document the Contractor submits to the Owner and the Architect itemizing amounts due for and operations completed at the Project site in accordance with the Contract.

§ 2.0.4 The **Architect**, listed above, is the entity with which the Owner has contracted in a separate Owner-Architect agreement; the Architect is described in Section 4.3 of this Agreement and defined in Section 4.1 of the revised General Conditions.

§ 2.0.5 A **Change Order** is defined in Section 7.2 of the revised General Conditions and is generally a written instrument prepared by the Architect and signed by the Owner, the Contractor and the Architect that modifies the Contract and states their agreement upon a Change in the Work, the amount of the adjustment, if any, in the GMP; and the extent of the adjustment, if any, in the Contract Time.

§ 2.0.6 A **Claim** is defined in Section 15.1.1 of the revised General Conditions and generally consists of a demand or assertion by one of the parties seeking, as a matter of right, adjustments or interpretations of Contract terms, payment of money, extension of time or other relief. The term "Claim" includes disputes and matters in question between the Owner and the Contractor arising out of or relating to the Contract Documents.

§ 2.0.7 A **Construction Change Directive** is defined in Section 7.3 of the revised General Conditions as a written order prepared by the Architect and signed by the Owner and Architect, with or without the agreement of the Contractor, directing the Contractor to perform a change in the Work, or perform Work the Contractor contends to be a change in the Work, prior to agreement of the basis for adjustment, if any, to the Contract.

§ 2.0.8 The **Contractor** is the entity identified above as the party to this Agreement responsible for performing the Preconstruction Services and, upon successful negotiation and execution of the GMP Amendment, responsible for construction of the Work through its own services as well as through Subcontractors. The Contractor under this Contract shall provide the services of General Contractor/Construction Manager as defined in RCW 39.10.210(8).

§ 2.0.9 The **Contractor's Risk Contingency** is described in Section 3.2.4 of this Agreement.

§ 2.0.10 The **Construction Phase** is defined in Section 3.3 of this Agreement and any Special Conditions, and generally consists of the period of the Contract during which the Contractor performs construction of the Work after the earlier of execution of the GMP Amendment or the Owner's issuance of a Notice to Proceed.

§ 2.0.11 The **Construction Schedule** is the schedule defined in Section 3.10 of the revised General Conditions and prepared, revised and utilized by the Contractor for its performance under the Contract.

§ 2.0.12 The **Contract Documents** are defined in Section 1.1.1 of the revised General Conditions and Section 2.1 of this Agreement.

§ 2.0.13 The **Contract** is defined in Section 1.1.2 of the revised General Conditions and is the entire and integrated agreement between the Owner and the Contractor.

§ 2.0.14 The **Contract Sum** is defined in Section 6.1 of this Agreement and Section 9.1 of the revised General Conditions that the Owner agrees to pay the Contractor for its performance of the Work under the Contract. The Contract Sum consists of the sum of the Cost of the Work (including Negotiated Support Services and Specified General Conditions) as well as the Contractor's Fee, and it shall not exceed the GMP. Neither the Preconstruction Services Cost nor Washington State sales tax is included in the Contract Sum.

§ 2.0.15 The **Contract Time** is the time defined in Section 8.1.1 of the revised General Conditions and specified in the GMP Amendment to achieve Substantial Completion of the Work.

§ 2.0.16 The **Cost of the Work** is defined in Article 7 of this Agreement.

§ 2.0.17 **Days** are defined as working days, unless otherwise specified.

§ 2.0.18 **Drawings** are defined in Section 1.1.5 of the revised General Conditions and generally are the graphic and pictorial portions of the Contract Documents showing the design and location of the Work, and generally include plans, elevations, sections, details, dimensions, schedules and diagrams.

§ 2.0.19 The Contractor's **Fee** is the amount specified in the GMP Amendment based on the percentage contained in Section 6.1.2 of this Agreement that the Contractor is to receive under this Contract in addition to the Cost of the Work for its performance of the Work. The Fee compensates the Contractor for all aspects of its performance other than the Cost of the Work, and it includes the Contractor's profit and all overhead expenses not otherwise reimbursable under this Agreement or through the Specified General Conditions, including but not limited to all bonds and insurance required by Article 11 of the revised General Conditions, home office overhead, and all taxes except sales tax on the Contract Sum, and as otherwise described in this Agreement. The Fee is applied to all reimbursable Costs of the Work as defined in Sections 7.1 through 7.7, the Negotiated Support Services, and the Specified General Conditions. The fee is not applied to the Contractor's Contingency and is only earned on and applied to the Contractor's Contingency as such costs are incurred. The Fee is not applied to any other costs except as described above.

§ 2.0.20 **Final Acceptance** is defined in Section 9.10.2.1 of the revised General Conditions and is the date on which the City Council has formally accepted the Project.

§ 2.0.21 **Final Completion** is defined in Section 9.10.1 of the revised General Conditions and generally occurs when the Owner finds that the Work has been completed, the required occupancy permit has been issued, the commissioning process and any validation process have been successfully concluded, incidental corrective or punchlist Work and final cleaning have been completed, the Contractor has submitted or delivered all specified items, the Contractor has submitted a final Application for Payment, and the Owner has approved a final Application for Payment.

§ 2.0.22 The **General Conditions** are the revised 2017 Edition of AIA Document A201, General Conditions of the Contract for Construction, which is incorporated herein by reference. All references to the A201 General Conditions or the "revised General Conditions" in the Contract Documents are to the revised document.

§ 2.0.23 The **Guaranteed Maximum Price ("GMP")** is defined in Section 3.2 of this Agreement, described in Section 6.2 of this Agreement, and established in the GMP Amendment. The GMP consists of the sum that the Owner and the Contractor establish in the GMP Amendment as the fixed limit for all Costs of the Work reimbursable under Article 7 of this Agreement, which includes the MACC, the Negotiated Support Services, the Specified General Conditions, the Contractor's Risk Contingency, and the Contractor's Fee. The GMP does not include the Preconstruction Services Cost or sales tax on progress payments. State and local sales tax on the Contract Sum will be paid by the Owner with progress payments. The Owner is not obligated to pay the Contractor more than the GMP for the performance of the Work. The GMP is the equivalent to the "Total Contract Cost" as that term is used in RCW 39.10.210(20).

§ 2.0.24 The **GMP Amendment** is described in Section 3.2.6 of this Agreement and generally is an amendment to this Agreement in the form attached as Exhibit A to this Agreement setting forth the GMP for all or for an identified portion of the Work, the information and assumptions upon which it is based, the Contract Time, and other information upon which the parties agree.

§ 2.0.25 The **Maximum Allowable Construction Cost ("MACC")** generally consists of the sum to which the Owner and the Contractor agree in writing as an estimate of the maximum Cost of the Work reimbursable under Article 7 of this Agreement, including the percentage for the Contractor's Risk Contingency, Negotiated Support Services, and

approved Change Orders. The MACC does not include the Specified General Conditions, the Contractor's Fee, Preconstruction Services, or sales tax. A final MACC will be established as part of the GMP negotiation in accordance with this Agreement.

§ 2.0.26 **Negotiated Support Services** are defined in Section 7.7.3 of this Agreement and are generally items the Contractor normally would manage or perform on the Work for a municipality, including but not limited to, surveying, laser scanning, hoisting, safety enforcement, cleanup and trash removal, street cleaning, dust control, maintenance of traffic on public street and roads, temporary heat, temporary hookups, temporary toilets, temporary signs, fences, enclosures, barriers and barricades, temporary meter installation for water, utilities, natural gas, sewer and storm sewer, advertisement and negotiation of subcontract bid packages, and sustainability benchmarking documentation (such as LEED). Approved Negotiated Support Services are reimbursable, consistent with the Contract Documents, to the extent they are Costs of the Work within the GMP. The Contractor's management of Negotiated Support Services is included within the Specified General Conditions amount. If the Owner requires the Contractor to provide the Builder's Risk insurance, such premiums will be paid as a Negotiated Support Service.

§ 2.0.27 The **Notice to Proceed** is a written notice the Owner submits to the Contractor that generally permits construction or a designated portion thereof to commence upon the Contractor's compliance with conditions expressed in the notice. An executed GMP Amendment shall act as a Notice to Proceed with the Work covered by the GMP Amendment, unless stated otherwise therein.

§ 2.0.28 The **Owner** is the entity listed on the first page of this Agreement or its Designated Representative.

§ 2.0.29 The **Owner-Architect Agreement** is the separate agreement between the Owner and the Architect relating to the design of the Project.

§ 2.0.30 The **Owner's Designated Representative** is the party (or parties) that the Owner has authorized in writing to act on behalf of the Owner with respect to certain of Owner's rights and responsibilities under the Contract.

§ 2.0.31 The **Preconstruction Phase** is defined in Section 3.1 of this Agreement and generally consists of the initial portion of the Contractor's services and performance under the Contract prior to execution of the GMP Amendment or issuance of the Notice to Proceed.

§ 2.0.32 The **Preconstruction Services** generally consist of those services provided by the Contractor under Section 3.1 of this Agreement and any exhibit describing the Preconstruction Services.

§ 2.0.33 The **Preconstruction Services Cost** is defined in Section 5.1 of this Agreement and is the compensation payable by the Owner to the Contractor for Preconstruction Services.

§ 2.0.34 The **Project** is defined on the cover page above and in Section 1.1.4 of the revised General Conditions.

§ 2.0.36 The **Project Team** consists of the Contractor, the Owner, the Architect and all consultants and Subcontractors of any tier employed or retained by each of them.

§ 2.0.37 **Specifications** are defined in Section 1.1.6 of the revised General Conditions and generally consist of the portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance or related services.

§ 2.0.38 **Specified General Conditions** are further defined in Article 7 of this Agreement and further clarified in the Cost Responsibility Matrix and generally mean certain selected general conditions Work and services specified in the Contract Documents to be provided by the Contractor for the fixed Specified General Conditions price as a part of the Cost of the Work. The Specified General Conditions are to be performed by the Contractor with its own forces in most instances. The Specified General Conditions include any Preconstruction Services that occur after the GMP is established through execution of the GMP Amendment. The Specified General Conditions include but are not limited to the Contractor's construction administration, management services and supervision of the Project, all costs associated with the subcontractor bidding process (except costs of document reproduction), such as developing solicitations, site tours, responding to questions from bidders, providing a bid opening facility (unless the Owner elects to provide such facilities), bidding in accordance with the requirements of RCW 39.10, the Contract Documents, subcontract award, and all aspects of safety implementation and administration. Any cost that is not specifically identified as a reimbursable

Cost of the Work shall be covered by the amount bid for Specified General Conditions.

§ 2.0.39 The **Subcontracting Plan** is defined in Section 3.1.10 of this Agreement and is prepared by the Contractor for the Owner's approval prior to conclusion of the Design Development phase. It identifies all proposed subcontract bid packages, any contemplated alternative subcontractor selection process permitted by RCW 39.10, any bid packages for which the Contractor expects to compete, all subcontractor scopes of work, the timing of solicitation of subcontractor bids for the packages to meet the Construction Schedule, major coordination issues with other packages, and means to enhance the opportunity for small, disadvantaged and local businesses to participate in performing the Work.

§ 2.0.40 A **Subcontractor** is defined in Section 5.1 of the revised General Conditions and is generally a person or entity that has a direct contract with the Contractor. A **Subcontractor of any tier** is a Subcontractor or a lower tier subcontractor that performs a portion of the Work of the Project at the site or supplies materials or equipment. A **Bidder-Design Subcontractor** is a Subcontractor that will not only construct discrete portions of the Work but also will design such portion as specified in the GMP Amendment.

§ 2.0.41 Substantial Completion is defined in Section 9.8.1 of the revised General Conditions. The date of Substantial Completion will be established in the GMP Amendment.

§ 2.0.42 The **Work** is defined in Section 1.1.3 of the revised General Conditions and generally means the construction and services performed in the Construction Phase as required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill its obligations.

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Contractor's GMP proposal, the Contract Documents will also include the documents described in Section 3.2.3 of this Agreement and identified in the GMP Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8 of this Agreement. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner to furnish professional, competent and efficient construction administration, management services, and supervision, with sufficient quantities of fully qualified, competent and experienced personnel; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious, workmanlike and economical manner in compliance with the Contract Documents and consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents. The parties shall endeavor to promote harmony, mutual respect, and cooperation among the Owner, Architect, Contractor, authorities having jurisdiction, and other persons or entities employed by them for the Project to the fullest extent possible in order to further the interests of the Owner in the Project and to effect prompt and successful completion of the Project within the requirements of the Contract Documents, the Contract Time and the GMP.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, as revised, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, as revised, which document is incorporated herein by reference.

§ 2.3.3 The Contractor shall perform the Preconstruction Services, shall be responsible for coordinating the activities of construction during the Construction Phase if the GMP Amendment is signed, shall be fully responsible for discharging all of the Contractor's obligations under the Contract Documents, and, during the Preconstruction and Construction Phases, shall advise and work with the Project Team to make recommendations for alternate or substitute products and technologies, construction techniques, methods and practices based on maintainability and durability as well as cost savings, time saving and/or other related efficiencies. The Owner will be responsible for coordinating the activities of the Project Team during the Preconstruction Phase.

ARTICLE 3 CONTRACTOR'S RESPONSIBILITIES

The Contractor's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2 of this Agreement, and in the applicable provisions of A201-2017 referenced in Section 2.3.1 of this Agreement. The Contractor's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Contractor may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Contractor's Designated Representative identified in Section 1.1.12 of this Agreement shall be authorized to act on behalf of the Contractor with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Contractor shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Contractor. The Contractor, however, does not warrant or guarantee estimates and schedules except as may be included as part of the GMP. The Contractor is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. The Contractor shall carefully review upon receipt all Drawings and Specifications submitted to it at each level of design. The Contractor shall promptly report to the Owner and the Architect any error, inconsistency or omission that the Contractor may discover in them and shall recommend changes and alternatives. The Contractor's review shall be made in the Contractor's capacity as a contractor and not as a licensed design professional, except to the extent the Contractor or a Subcontractor has bidder-design responsibilities.

§ 3.1.2 The Contractor shall participate as part of the Project team to provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, and coordinate estimating reconciliation, each in terms of the other. The Contractor shall perform the Preconstruction Services described in this Agreement and applicable provisions of chapter 39.10 RCW as well as the Preconstruction Services described in the Preconstruction Services Scope of Work.

§ 3.1.3 Consultation

§ 3.1.3.1 The Contractor shall jointly schedule and conduct meetings with the Architect and Owner at a minimum on a weekly basis during the schematic design phase, design development phase, and the Construction Document phase to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Contractor shall actively and cooperatively advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Contractor shall also actively and cooperatively provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; phasing and site work planning; sequencing and scheduling for procurement, installation and construction; traffic planning; occupied campus strategies; factors related to construction quality, local market trends, bidding strategies, maintainability and durability; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, value engineering and constructability review, and possible cost reductions. The Contractor shall consult with the Owner and Architect regarding professional services to be provided by the Contractor during the Construction Phase.

§ 3.1.3.3 The Contractor shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project.

§ 3.1.3.4 The Contractor shall review the Schematic Design Documents, Design Development Documents and Construction Documents, Specifications, and other Contract Documents as they are developed and completed. These documents will include those prepared by any bidder-design Subcontractors and may be developed at different rates for

different components of the Project. The Contractor shall also review all other documents provided by the Owner, including but not limited to the associated environmental documents, all record drawings of existing facilities and all documents provided or made available as a part of the GC/CM selection process. The Contractor shall promptly report in writing to the Owner and the Architect any errors, inconsistencies, incomplete information or other questions or deficiencies that the Contractor has discovered and that need to be resolved for the successful completion of the Work, paying particular attention to coordination issues. Design review activities are to be a cooperative and collaborative effort with the Architect, the Owner, and their consultants. The Contractor shall recommend changes and alternatives to the Architect and Owner, without, however, assuming any of the Architect's design responsibilities, except to the extent the Contractor or a Subcontractor performs bidder-design Work.

§ 3.1.3.5 Constructability. The Contractor shall work with the Owner and Architect to prepare a constructability plan for the Project to reduce cost, save time, improve quality, reduce risk and improve the overall process of Project delivery. Key objectives of the constructability program will include creation and maintenance of a well-planned, safe, effective, cooperative and mutually beneficial work environment for all participants. A primary objective of these efforts will be to assist the Owner to ensure that the final GMP does not exceed the Owner's budget and that the Project is completed on time. The Contractor shall perform actions designed to minimize adverse effects of labor or material shortages or delays; time requirements for procurement, installation and construction completion; and factors related to construction cost. As part of this effort, the Contractor shall participate in and provide written comments as a part of formal constructability reviews following completion of the Design Development Documents and when the Construction Documents are 90% complete and shall confirm prior to solicitation of the first subcontract bid package that a constructability analysis has been performed.

§ 3.1.3.6 Value Engineering. The Contractor will participate in value engineering the design documents at 30% Schematic Design and at 50% of the Design Development phase and on a continuing basis with the Architect in subsequent phases up to 90% Construction Documents. At the completion of each of its reviews, the Contractor will provide the Owner and Architect with a formal record of its findings and recommendations. The Architect and the Contractor will brief the Owner and any value engineers and answer their questions to determine the advisability of changes in the design documents. Value engineering will include selecting building systems, with final selection of systems to occur prior to the start of the Construction Documents Phase.

§ 3.1.3.7 Site Investigation. The Contractor shall suggest to the Owner and shall perform as agreed with the Owner and as a non-labor cost under Section 5.1, site investigation to assist in development of the design and construction planning.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, and by no later than 50% of the Design Development phase, the Contractor shall prepare and periodically update a Project schedule for the Owner's and Architect's review and the Owner's acceptance. Regardless of any review, acceptance, or approval of the Contractor's schedule, the Owner shall not be responsible for any aspects of the Project schedule. The Contractor shall obtain the Owner's and Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Contractor's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the GMP proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner. The Contractor will be responsible for the Project schedule, including a plan for phased construction defined in the Contract Documents.

§ 3.1.5 Phased Construction

The Contractor, in consultation with the Owner and Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Contractor shall take into consideration occupancy needs, site logistics, utilities, safety, cost reductions, cost information, constructability, provisions for temporary facilities, permitting timelines, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Contractor shall prepare, for the Owner's and Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the

Architect or Contractor suggests alternative materials and systems, the Contractor shall provide cost evaluations of those alternative materials and systems. The Owner will provide an independent estimate prepared by the Architect; the Contractor shall participate in a cost reconciliation process in accordance with the Preconstruction Services identified in Specification Section 00-50-07, Attachment A1.

§ 3.1.6.2 The Contractor shall collaborate with the Architect and the Owner on cost estimates throughout the Preconstruction Phase, and will prepare detailed cost estimates following completion of the Schematic Design Phase, completion of the Design Development Phase at 60% Construction Documents and when Construction Documents are 90% complete (the "GMP estimate"). The Contractor shall also reconcile its estimate with the Architect's and/or the Owner's independent cost estimator at each phase for the Contractor's, Architect's, and Owner's acceptance. Cost escalation to the time of Subcontractor bidding shall not exceed five percent (5%) per year of these estimates without approval of the Owner. Timely and complete estimates are critical to the success of the Project; therefore, failure of the Contractor to submit timely cost estimates shall be grounds for the termination of the Contractor for cause. As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Contractor shall prepare and update, at appropriate intervals agreed to by the Owner, Contractor and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Contractor agree on a GMP for the Work. Such estimates shall be provided for the Architect's and Owner's review and the Owner's approval. The Contractor shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action, including participation in preparing a list of proposed cost savings equal to or greater than the overage. The Contractor shall also collaborate with the Architect and Owner on cost estimates prior to issuing each subcontract bid package, and will, at a minimum, prepare detailed cost estimates for each such package.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Contractor's cost estimates and the Architect's cost estimates, the Contractor and the Architect shall work together with the Owner to reconcile the cost estimates, consistent with the Scope of Work for Preconstruction Services, and to align the estimates with the Owner's prioritization of scope elements.

§ 3.1.7 The Contractor shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities. The Contractor shall suggest to the Owner and shall perform, as agreed with the Owner under Section 3.1.3.2, site investigation to assist in development of the design and construction planning.

§ 3.1.8 The Contractor shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval. Refer to the Request for Proposals, Request for Final Proposals and the personnel identified by the Contractor in response thereto.

§ 3.1.9 The Owner's anticipated Sustainable Objective for the Project:

TBD

§ 3.1.10 Subcontractors and Suppliers

§ 3.1.10.1 The Contractor shall develop bidders' interest in the Project. The Contractor shall prepare and submit a construction management and subcontracting plan ("Subcontracting Plan") to the Owner and the Architect for approval prior to conclusion of the Design Development Phase. Prior to negotiation of the GMP, the Owner and the Contractor shall negotiate the following terms and shall include the Subcontracting Plan as an exhibit to the GMP Amendment. The Subcontracting Plan shall describe the process for allocating scopes of Work among the bid packages and shall, for and within each Component, identify:

- .1 All subcontract bid packages, specifying those upon which the Contractor or its affiliates intend to bid;
- .2 The scopes of Work, timing of solicitation of bids for the packages to meet the Construction Schedule;
- .3 Major coordination issues with other packages;
- .4 Contractor's plan to prepare bid packages to reduce barriers for and increase participation by business entities certified with the Office of Minority and Women's Business Enterprises, including small businesses, and business entities certified with the Department of Veterans Affairs.
- .5 The scope and cost estimates for each subcontract bid package.

- .6 Any intention of the Contractor to select a Subcontractor in accordance with the alternative procedure specified in RCW 39.10.385.

§ 3.1.10.2 The Contractor shall use its best efforts to develop the interest of Subcontractor bidders in the Project. The Contractor shall consider prebid determinations of Subcontractor eligibility to the extent permitted by statute and shall furnish to the Owner and Architect for their information as a part of the submittal of its Subcontracting Plan a list of possible eligible Subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Owner will promptly reply in writing to the Contractor if the Architect or Owner knows of any objection to such Subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed Subcontractors or suppliers, nor shall it or the lack of any objection waive the right of the Owner or Architect later to object to or reject any proposed Subcontractor or supplier.

§ 3.1.10.3 If the value of an individual anticipated subcontract exceeds \$3 million, the Owner may consider use of the alternative subcontractor selection process provided by RCW 39.10.385. Subject to Owner's approval, the Contractor shall conduct all alternative subcontractor selection in strict accordance with the requirements of RCW 39.10.385.

§ 3.1.11 Long-Lead Time Procurement

§ 3.1.11.1 The Contractor shall prepare, for the Architect's and Owner's review and the Owner's acceptance, and update at least monthly, a procurement schedule for items and/or associated services that must be ordered well in advance of construction. The Contractor shall expedite and coordinate the bidding, ordering and delivery of materials that must be bid or ordered well in advance of construction. The Owner may also procure any items prior to the establishment of the GMP on terms and conditions acceptable to the Contractor. Upon the establishment of the GMP, the Owner shall assign all contracts for these items to the Contractor and the Contractor shall thereafter accept responsibility for them.

§ 3.1.11.2 The Contractor shall identify and estimate the value of any items that require off-site storage, together with proposed locations for storage during the course of the Work acceptable to Owner. These locations shall be selected to provide a maximum of protection and minimum of cost and delay associated with delivery to the site and shall conform with the requirements of Section 11.1.3.5 of this Agreement.

§ 3.1.12 Extent of Responsibility

§ 3.1.12.1 The Contractor shall exercise reasonable care in preparing schedules and estimates. The Contractor, however, does not warrant or guarantee estimates and schedules except as may be included as part of the GMP. The Contractor is not required to ascertain that the Drawings and Specifications prepared by the Architect are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.1.12.2 The Contractor shall carefully review upon receipt all Drawings, Specifications and Reports submitted to it at each level of design. The Contractor shall promptly report to the Owner and the Architect any error, inconsistency or omission that the Contractor may discover in them and shall recommend changes and alternatives. The Contractor's review shall be made in the Contractor's capacity as a contractor and not as a licensed design professional, except to the extent the Contractor or a Subcontractor has bidder-design responsibilities.

§ 3.1.13 Compliance with Laws

The Contractor shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, apprenticeship programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Contractor, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

See Specification Section 00 50 07 (SCOPE OF WORK FOR PRECONSTRUCTION SERVICES).

§ 3.2 GMP Proposal and Contract Time

§ 3.2.0 Early Bid Package Amendments. The Owner and the Contractor may agree to one or more initial GMP amendments to provide for early Project Work prior to completion of 90% Drawings and Specifications and prior to agreement on the final GMP Amendment as provided in Section 3.2.6 of this Agreement (“Early Bid Package Amendments”). All Early Bid Package Amendments shall conform with the requirements of this Agreement, except that such Early Bid Package Amendments may be agreed upon and executed at any point in the Project design phase.

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Contractor, and when the Construction Drawings and Specifications are at least 90% complete, the Owner will submit a "GMP set" of Construction Documents to the Contractor, and within twenty-one (21) days of receipt of the 'GMP set, unless a longer period of time is approved by the Owner due to special conditions or circumstances, and in consultation with the Architect and Owner, the Contractor shall prepare a GMP proposal for the Owner's review, negotiation, and acceptance. The Contractor shall promptly notify the Owner if it does not consider the Drawings and Specifications to be at least 90% complete and shall not propose a GMP until the Drawings and Specifications are at least 90% complete. A list of items needed to obtain 90% completion shall be prepared by the Contractor and agreed to by the Owner and the Architect prior to additional information being added to the Construction Documents.

§ 3.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor shall provide in the GMP for such further development consistent with the Contract Documents and reasonably inferable therefrom by allowing for such further development in its cost estimates. The Contractor will also make allowance for market conditions at the time of bidding and possible estimating inaccuracies within the GMP. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order. A Change in the Work will not be warranted if the Work in question was reasonably inferable from or contemplated by, or a prudent contractor should have realized that the Work was necessary and appropriate under, the Contract Documents referenced in the GMP Amendment.

§ 3.2.3 The Contractor shall include with the GMP proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Contractor in the preparation of the GMP proposal, divided into the proposed subcontract bid packages and including assumptions under Section 3.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed GMP, including a statement of the estimated Cost of the Work organized by trade categories or systems, the MACC, Specified General Conditions, Negotiated Support Services, and other Article 7 Costs of the Work; the Contractor's Risk Contingency; and the Contractor's Fee (any Allowances must be limited and preapproved by the Owner);
- .4 The anticipated date of Substantial Completion – by phase as applicable – upon which the proposed GMP is based; and
- .5 A date by which the Owner must conclude negotiations and accept the GMP, subject to the Owner's internal review processes and approval sequence required to gain approval by the City Council.

§ 3.2.4. In preparing the Contractor's GMP proposal, the Contractor shall include its Risk Contingency, at least two percent (2%) and not to exceed five percent (5%) of the MACC, as agreed upon by the Owner and the Contractor, for the Contractor's exclusive use to cover costs arising under Section 3.2.4 and other costs that are properly reimbursable as a Cost of the Work but not qualified for inclusion in a Change Order. The Contractor may use the Contractor's Risk Contingency to pay for Project issues that are within its control, such as design issues that a reasonable Contractor should have resolved during the Preconstruction Services Phase, items in Drawings but not in the Specifications, items on one Drawing but not another, items specified but not drawn, non-specified items within Specifications, buy-out errors or shortfalls, scope gaps, ambiguities in the Construction Documents, damaged work not covered by insurance (including, to the extent permitted by the Contract Documents, a deductible), unanticipated general conditions expenses, interdisciplinary design coordination, Subcontractor performance, and expediting costs for critical materials. The Contractor's Risk Contingency may also be used for issues beyond the Contractor's control such as lost time, increases in bid contracts, and Subcontractor performance or failure. The Contractor must give the Owner notice and supporting

cost backup when applying to use the Contractor's Risk Contingency. Except in the case of a mutual agreement between the Contractor and Owner, which shall be documented in writing, the Contractor shall not use the Contingency to pay for costs related to enhancements or additions to the Scope of Work desired by the Owner, unforeseen or differing site conditions or design errors or omissions beyond the reasonable inferences described in Section 3.2.2 of the Agreement, as such costs shall be subject to a Change Order. The Contractor shall use the Contractor's Risk Contingency only with the Owner's prior written consent, which shall not unreasonably be withheld. Each use of the Contractor's Risk Contingency shall be shown as a separate line item in the Schedule of Values submitted with Applications for Payment. Any balance remaining in the Risk Contingency shall be returned to the Owner in a deductive Change Order before Final Payment.

§ 3.2.4.1 The MACC shall consist of all Subcontractor scope of Work by bid package consistent with the Subcontracting Plan, including Work the Contractor will self-perform through the Subcontracting bidding process, and other Article 7 Costs of the Work except the Specified General Conditions. The MACC used in negotiating the GMP shall be the summation of the actual amounts of any Subcontract bid packages awarded and estimated amounts for Subcontract bid packages not yet bid. Upon completion of the buyout of Subcontract bid packages, the Contractor shall ascertain whether any scope changes beyond those specified in Section 3.2.2 have occurred in the Subcontract bidding documents as a result of completion of the Construction Documents to the 100% level. In the event that these scope changes are required for the Project and approved by both the Contractor and the Owner, any balance in the MACC may be accessed. Any amounts remaining in the MACC when all the Subcontract bid packages have been awarded shall be added to the Contractor's Risk Contingency. It is the intent of the parties that when the GMP is set, the Contractor will have participated in and be fully aware of the existing conditions and proposed design for the Project. It is further intended that the GMP will include all elements necessary to complete the Project in accordance with the Contract Documents, and that Change Orders adjusting the GMP will therefore not be necessary except in limited circumstances as set forth below. Accordingly, the GMP shall be adjusted principally for the following events:

- .1 **Scope Changes.** Owner revisions on scope items previously approved by the Owner and incorporated in the pricing of the GMP. Examples: The Owner approved use of MC cable in lieu of conduit for branch wiring runs and later decides to change back to conduit; or bid alternates not included in the GMP.
- .2 **Concealed or Unknown Conditions** as described in Section 3.7.4 of the revised General Conditions. For example, during the Construction Phase, substantially differing site conditions are encountered that could not have been reasonably anticipated or discovered by the Contractor during the Preconstruction Phase. This category includes unknown and unforeseeable hazmat conditions and soil conditions.
- .3 **Regulatory Agency Changes.** Costs incurred as a result of changes in regulatory requirements but only where such requirements change after execution of the GMP Amendment. (This shall not include costs incurred as a result of inspections or other actions necessitated by pre-existing requirements of the Project permits).
- .4 **Significant Design Errors or Omissions.** Significant errors or omissions in the Drawings or Specifications that could not reasonably have been anticipated or discovered by the Contractor before the GMP was established. However, design errors and omissions do not include, for example: (1) failure to coordinate between trades; (2) requirements of the Specifications that are not specifically shown in Drawings; (3) requirements of the Drawings that are not specifically described in the Specifications; or (4) design changes made at the request of the Contractor in order to facilitate the constructability of the Project. The failure of the Architect to specify every detail in the Construction Documents does not eliminate the requirement for the Contractor to provide at least a standard commercially available detail of institutional quality to serve the basic functions of the design.
- .5 **Changes required by governmental inspectors to meet requirements beyond those contained in regulations.** Changes required by an inspector of a governmental authority having jurisdiction beyond those contained in regulations or previously communicated.
- .6 **Allowance adjustments.**

§ 3.2.4.2 Examples of events for which the GMP shall not be adjusted include but are not limited to:

- .1 **Subcontractor Gaps.** Gaps in scope coverage between Subcontractors, including self-performed Work.
- .2 **Scope Gaps.** An item indicated in the Drawings or Specifications that was not picked up in the GMP.

- .3 **Ambiguities.** Ambiguities in the Construction Documents that the Contractor knew of or that a reasonable contractor would have identified and raised with the Owner prior to establishing the GMP.
- .4 **Interdisciplinary Coordination.** Coordination inconsistencies and errors between design disciplines that the Contractor knew of, caused or contributed to, or reasonably should have known of.
- .5 **Subcontractor Failure.** A Subcontractor fails to perform or goes bankrupt.
- .6 **Escalation of materials, equipment or labor prices.**
- .7 **The Contractor's estimating errors.**
- .8 **Expediting costs for critical materials.**
- .9 **Coordination Claims.** Costs related to Subcontractor Claims or charges that result from mistakes or omissions in Subcontractor buyout, or coordination issues between Subcontractors, or interference between Subcontractor and the Contractor or among Subcontractors.
- .10 Delays which were not directly caused by an act or neglect of the Owner, the Architect, the Owner's Consultants, the Owner's separate Contractors, or anyone acting on behalf of any of them.
- .11 Work required to comply with applicable code.

§ 3.2.5 The Contractor shall meet with the Owner and Architect to review the GMP proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Contractor, who shall make appropriate adjustments to the GMP proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Contractor that the Owner has accepted the GMP proposal in writing before the date specified in the GMP proposal, the GMP proposal shall be deemed effective without further acceptance from the Contractor. Following acceptance of a GMP, the Owner and Contractor shall execute the GMP Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The GMP Amendment shall set forth the agreed upon GMP with the information and assumptions upon which it is based.

§ 3.2.7 The Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize the Architect to provide revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the GMP Amendment. Revisions to the Drawings and Specifications will be included in the 100% Submittal and promptly furnished to the Contractor. The Contractor shall notify the Owner and Architect promptly and in writing of any inconsistencies between the GMP Amendment and the revised Drawings and Specifications, and shall comply with the contractual procedure in providing notice and asserting and pursuing any Claim that may arise therefrom. If the Contractor does not provide this notification within thirty (30) days of its receipt of the revised Drawings and Specifications, the revisions shall be considered accepted with no change in the GMP or Contract Time.

§ 3.2.9 The Contractor shall include in the GMP all consumer, use and similar taxes (but not sales taxes on the Contract Sum) for the Work provided by the Contractor that are legally enacted, whether or not yet effective, at the time the GMP Amendment is executed. The only taxes excluded from the GMP and separately reimbursable by the Owner are State and local sales taxes on the Contract Sum.

§ 3.2.10 If, upon establishing the GMP, the GMP varies more than 15% from the budget specified in the RFP due to changes in the scope requested and approved by the Owner, the Fee shall be renegotiated when the GMP is negotiated.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of the revised General Conditions, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the GMP Amendment or, prior to acceptance of the GMP proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Contractor, and any insurance and bond requirements for Work performed prior to execution of the GMP Amendment.

§ 3.3.1.3 Although it will not cause the Construction Phase to commence, the Owner may at any time approve the Contractor's (a) award of a subcontract, (b) undertaking construction Work with its own forces, or (c) issuance of a

purchase order for materials or equipment and/or associated services required for the Work. Any Work so approved and undertaken shall comply with and be subject to this Agreement and the revised General Conditions.

§ 3.3.2 Administration

§ 3.3.2.1 The Contractor shall schedule and conduct weekly progress meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Owner shall prepare and promptly distribute minutes to the Architect and Contractor.

§ 3.3.2.2 Upon the execution of the GMP Amendment, the Contractor shall prepare and submit to the Owner and Architect the Construction Schedule for the Work and submittal schedule in accordance with Section 3.10 of the revised General Conditions and other Contract Documents. The Contractor shall provide regular monitoring and shall update monthly (or sooner in the event of a substantial change) the Construction Schedule as Work progresses. The Construction Schedule shall conform with the requirements of Section 3.10 of the revised General Conditions.

§ 3.3.2.3 The Contractor shall record the progress of the Project. The Contractor shall submit as part of its monthly Application for Payment required by Section 11.1.3.1 of this Agreement, written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The reports shall:

- .1 Include information concerning both the entire Project and each subcontract bid package.
- .2 Identify variances between scheduled and probable completion dates, and recommend action required to meet scheduled completion dates.
- .3 Review the Construction Schedule for portions of the Project not started or incomplete and recommend to the Owner alternate procedures or adjustments to meet the scheduled completion dates.
- .4 Provide summary reports for each Construction Schedule update.
- .5 Document all significant changes in the Construction Schedule, whether the Owner approves of the change, and the reasons for them.
- .6 Record in writing and by photographs the progress of the Project.
- .7 Identify significant problems in scheduling together with recommended corrective action.
- .8 Maintain and report a QA/QC log.
- .9 Document any outstanding RFIs, CCDs, PRs, ASIs and CORs, and risks associated with delayed responses.
- .10 List outstanding submittals and risks associated with delayed responses.
- .11 Document any outstanding Change Orders and any risks associated with delayed responses.
- .12 The status of permits that the Contractor is required to obtain or assist in obtaining.

The Contractor shall also keep, and make available to the Owner and Architect with its monthly Application for Payment or more often as requested by the Owner, superintendent's Daily Report that shall include a record for each day of weather, Subcontractors working at the site, deliveries, Work accomplished, portions of the Work in progress, number and employer(s) of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner. The information provided on the Daily Report does not constitute notice of a potential or actual Claim to the Owner.

§ 3.3.2.4 The Contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Contractor shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.1.6.2 and Section 3.3.2.3 above. The Contractor shall include a Project status report in a format acceptable to the Owner, listing (i) all pending and/or approved Change Orders and Construction Change Directives (including amounts), (ii) an analysis of the Specified General Conditions and Negotiated Support Services budget with an explanation of substantial variances from previous budgets, (iii) projected cash flow of construction costs, (iv) an allocation by subcontract bid package and schedule-of-values line item, (v) expenditures to date, (vi) estimates to complete, (vii) forecast at completion, (viii) variances with budget and commitment, and (ix) the items for which the Owner has authorized the Contractor to use the Contractor's Risk Contingency, the cost of those approved items, and the balance of funds remaining in the Contractor's Risk Contingency account.

§ 3.3.2.5 The Contractor shall review and inspect the Work of the Subcontractors on a regular basis (at least as often as described in the Contract Documents) for defects and deficiencies in their Work and for conformance with the Drawings, Specifications and other Contract Documents, and shall stop the Work of Subcontractors if necessary. The

Contractor shall provide notification at regularly scheduled progress meetings of any material defects or deficiencies and recommend remedial action. The Contractor shall take the lead role in negotiating and resolving any disputes with Subcontractors and obtain the Owner's concurrence or approval of all settlements that may affect the GMP or the Contractor's Risk Contingency before executing change orders with Subcontractors.

§ 3.3.2.6 As part of the Specified General Conditions, the Contractor shall maintain, in good order and on a current basis, a record copy of all subcontracts, purchase orders, Drawings marked to record all changes made during construction, Specifications, addenda, Change Orders, and other Modifications, shop drawings, product data, samples, submittals, inspection reports, purchases, materials, equipment, applicable handbooks, maintenance and operating manuals and instructions, other related documents, and revisions which arise out of subcontracts or Work. These records shall be available to the Owner, and, at completion of the Project, delivered to the Owner.

§ 3.3.2.7 As part of the Specified General Conditions, the Contractor shall provide an adequate number of competent, qualified, and experienced staff consistent with or in excess of that specified in its response to the RFP, and which are on site daily to ensure adequate supervision of Work and ensure adequate decision-making. The staff shall include necessary and appropriate project managers, superintendents, field engineers, engineers, quality control specialists, scheduling engineers, cost engineers, clerical, accounting, data processing personnel, and others so that, among other things:

- .1 The Work is performed and coordinated in a timely manner in compliance with the Contract Documents;
- .2 Change Order Requests and responses to Construction Change Directives are submitted to the Owner within fourteen (14) days after the Contractor's receipt of the Construction Change Directives;
- .3 Responses to correspondence from the Owner, Subcontractors, and Governmental Agencies are provided within seven (7) days after receipt of such correspondence; and
- .4 Final Completion is achieved within the timeline identified in Article 9.10 of the revised General Conditions.

§ 3.3.2.8 Changes to personnel in key positions (Contractor's Designated Representative, project executive, project manager, superintendents, preconstruction managers, cost estimators, field engineers, and, if applicable, the project manager and superintendent of the MCCM and ECCM) must be done with a 14-day notice to the Owner and Owner's approval, which may be withheld with reasonable cause. Individuals with an equal or greater level of experience and competencies will be proposed by the Contractor to the Owner and the Architect for evaluation. Approval must be obtained by the Contractor from the Owner prior to any individual being allowed onto the Project Team. A three-month probationary period shall be afforded the Owner to evaluate each new individual. During this period, the Owner has the right to request that a new individual be introduced, and the process started again.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the GMP Amendment, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments of undisputed amounts to the Contractor as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payments when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor and Architect.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Contractor and Architect. The Owner and the Architect, in consultation with the Contractor, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. The Contractor shall review all documents and data provided, and provide comments, concerns or requests for additional or clarification of information within 21 days of receipt.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures, designated wetlands, adjacent drainage, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site, locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees, and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. The Contractor shall review all documents and data provided, and provide comments, concerns or requests for additional or clarification of information within 21 days of receipt.

§ 4.1.4.3 The Owner, when such services are requested and required of and approved by the Owner, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. For existing sites, building record reports provided by the Owner shall suffice.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 4.2 Legal Requirements.

The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. The Owner is not required to furnish legal, insurance and accounting services for the benefit of the Contractor.

§ 4.3 Architect

The Owner shall retain an Architect to provide services on the Project. The Owner shall provide the Contractor with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Contractor's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Contractor as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Compensation for the Preconstruction Services (the "Preconstruction Services Cost") shall not exceed \$221,480.00 and shall be paid on an hourly basis at the rates and for the individuals specified in Exhibit 1 to this Agreement. In addition, the Contractor shall receive compensation during the Preconstruction Phase for costs incurred to perform the Preconstruction Services, including equipment at the hourly rates specified in the attachment. Other additional costs that will be reimbursed when preapproved in writing may include but are not limited to costs of testing, intrusive, or non-intrusive investigation, selective demolition and restoration, copying, blueprints and courier costs. The Contractor shall not be entitled to compensation for negotiation of the GMP Amendment. The Preconstruction Services rates include personnel and consultant costs and all benefits, materials, equipment, taxes, profit and overhead. Costs that would cause

the not-to-exceed amount to be exceeded shall be paid by the Contractor without reimbursement by the Owner. The Contractor's Fee identified in Section 6.1.2 of this Agreement does not apply to Preconstruction Services, and any savings from any not-to-exceed amount for Preconstruction Services will revert to the Owner.

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Contractor and the Contractor's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Preconstruction Work Plan as required by Specification Section 00 05 08

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services shall be limited to the following costs:

- .1 Basic wages and fringe benefits: The hourly wage (without markup or labor burden) and fringe benefits performing the work.
- .2 Workers' insurances: Direct contributions to the State of Washington as industrial insurance, medical aid, and supplemental pension by class and rates established by the Washington Department of Labor and Industries.
- .3 Federal insurances: Direct contributions required by the Federal Insurance Compensation Act (FICA); Federal Unemployment Tax Act (FUTA); and State Unemployment Compensation Act (SUCA).
- .4 Safety costs not to exceed two percent (2%) of the sum of amounts in .1, .2 and .3 above.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within the agreed upon and approved schedule, through no fault of the Contractor, the Contractor's compensation for Preconstruction Phase services shall be equitably adjusted as determined by the Owner.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

Invoices for services shall contain detailed time and material accounting of the costs incurred and shall have supporting backup attached.

§ 5.2.2 Payments are due and payable within 30 days of an approved, fully itemized and fully executed Application for Payment that complies with all contractual requirements, including the specific requirements of Section 11.1.3 of this Agreement. Amounts unpaid ~~thirty~~ (30) days after submission of such contractually compliant Application for Payment shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Contractor.

(Insert rate of monthly or annual interest agreed upon.)

One Percent (1%) per month

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract after execution of the GMP Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 6.1.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)

The Contractor's Fee for the Work during the Construction Phase shall be the fixed, lump sum amount that will be calculated as (1) the percentage specified in the Fee Proposal Form (two and nine-eighth hundredth percent (2.98%)) times (2) the MACC negotiated as part of the GMP plus the Negotiated Support Services plus the Specified General Conditions. The Fee shall be applied to any use of the Contractor's Contingency but only as such Contingency is used by the Contractor.

§ 6.1.3 The method of adjustment of the Contractor's Fee for changes in the Work:

In the event a Change Order is issued for a Change in the Work, the percent change in the Contractor's Fee will be the percentage specified above in Section 6.1.2. The Contractor shall also be entitled to proven increased premiums

associated with the changed Work for contractually-required insurance and bonds above the amounts already included within the Contractor's fixed Specified General Conditions. Upon request, Contractor shall provide the Owner with supporting documentation from its insurer and surety of any associated cost incurred. The Contractor is not entitled to any increased premium on any retainage bond as such bonds are optional. If the Contractor performs Work as a Subcontractor (i.e. on a package on which the Contractor was the low Subcontractor-bidder), the Contractor shall be paid the Subcontractor's Fee as provided in Section 7.5.6 of the General Conditions on changed Work but shall not have the Contractor's Fee stated in 6.1.2 applied to such changed Work.

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

The Fee for changed Work for which the Owner is responsible and which is directly performed by a Subcontractor of any tier, including overhead and profit, is specified in Section 7.5 of the revised General Conditions. If a lower-tier Subcontractor performs changed Work, the Fee of upper-tier Subcontractors is also specified in Section 7.5 of the revised General Conditions. If a Subcontractor is selected under RCW 39.10.385 on a cost reimbursable plus fee basis, then the fee percentage bid by that subcontractor shall also be applied to changed Work performed by that Subcontractor.

§ 6.1.5 Rental rates for Contractor-owned equipment shall not exceed the rates identified in Section 7.5.2 herein.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

Liquidated Damages shall be established in the GMP Amendment(s).

§ 6.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

There are no shared savings provisions; all savings shall revert to the Owner.

§ 6.1.8 The Specified General Conditions are in the fixed amount of Nine hundred nine thousand nine hundred twenty Dollars (\$909,920) based on the level of staffing and project duration known at the time of fee proposal submission. The final Specified General Conditions sum shall be negotiated based on the level of staffing and duration of service required for Contractor's management staff. The unit rates are quoted in the Fee Proposal and Preconstruction Cost Proposal Form.

§ 6.1.9 The not to exceed, lump sum for Negotiated Support Services will be negotiated at the time of establishing the MACC.

§ 6.2 Guaranteed Maximum Price

The Contractor guarantees that the Contract Sum shall not exceed the GMP set forth in the GMP Amendment, as it is amended from time to time. To the extent the Cost of the Work, Negotiated Support Services, Specified General Conditions, the Contractor's Risk Contingency, plus the Contractor's Fee exceeds the GMP, the Contractor shall bear such costs in excess of the GMP without reimbursement or additional compensation from the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue, via the Architect, such changes in writing. The Contractor may be entitled to an equitable adjustment in the GMP and/or Contract Time consistent with the requirements of the Contract Documents as a result of changes in the Work.

§ 6.3.1.1 The Owner or Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201-2017, General Conditions of the Contract for Construction which would not result in changes to the GMP or the Contract Time.

§ 6.3.2 Adjustments to the GMP on account of changes in the Work subsequent to the execution of the GMP Amendment may be determined by any of the methods listed in Article 7 of the revised General Conditions.

§ 6.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of the revised General Conditions and the term "costs" as used in Section 7.3.7 of the revised General Conditions shall have the meanings assigned to them in Section 7.5 of the revised General Conditions and shall not be modified by Sections 6.1 and 6.2, Sections 7.1 through 7.6, and Section 7.9 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts and the Contract Documents.

§ 6.3.4 In calculating adjustments to the GMP, resulting from changes in the Work, the terms "cost" and "costs" as used in Article 7 of AIA Document A201-2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 6.1.2 of this Agreement.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean the actual, net costs reasonably and necessarily incurred by the Contractor in the proper performance of the Work, without overhead, profit, fee or markup. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel are included in the Specified General Conditions and not separately reimbursable.

§ 7.2.2.1 Wages or salaries of the Contractor's supervisory and administrative personnel when performing Work and stationed at a location other than the site are included in the Specified General Conditions and so are not separately reimbursable.

§ 7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, are included in the Specified General Conditions and not separately reimbursable.

§ 7.2.4 Costs paid or incurred by the Contractor, as required by law for taxes, insurance, contributions, assessments and benefits and customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3. This does not include insurance required by the Contract Documents, which costs are included within the Contractor's Fee. Costs paid or incurred by the Contractor for vacations, bonuses, travel, stock options, deferred compensation, or discretionary payments to employees are not directly reimbursable. As part of the GMP Amendment, the parties shall agree to a wage burden rate for all workers, which will be fully burdened, including all the wage-based costs, and fixed for the duration of the Contract time. Burden rates, including any agreed burden rates, are subject to the Owner's audit to confirm that the burden has been correctly calculated and applied in accordance with the Contract Documents.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. The Contractor shall maintain a procedure for the review, processing and payment of applications by the Subcontractors for progress and final payments, all in accordance with the terms and conditions of the Contract Documents. The Contractor shall verify the completeness of all applications for payment and assemble and check all

supporting documentation required by the Contract Documents or by the subcontracts with respect to each Application for Payment, including all lien waivers and releases.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction, except costs of on-site storage and handling of materials, which are included under Specified General Conditions and are not separately reimbursable.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold or returned by the Contractor. Any amounts realized from such sales or returns shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.4.3 Notwithstanding the above, costs of material and equipment directly procured by the Contractor (and not bid through a subcontract package) and incorporated in the completed construction will generally be included in Negotiated Support Services.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges, not to exceed the local fair market rental costs, actually paid to non-related third parties for items including, but not limited to, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are not provided by the Contractor at the site and the costs of transportation, installation, minor repairs, dismantling and removal. Rentals from the Contractor or any entity in which the Contractor or one or more of its Owner has a direct or indirect ownership interest shall be separately calculated and rental costs shall be determined in accordance with the methodology provided by Section 7.5.3 of the General Conditions.

§ 7.5.3 Costs of street cleaning, removal of rubbish and debris from the site of the Work and its proper and legal disposal will be included in Negotiated Support Services, except where such costs are normally included in a trade subcontract, in which case such costs will be considered a Cost of the Work.

§ 7.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office are included in Specified General Conditions and are not separately reimbursable, except for the costs of document reproduction for subcontractor bidding which are a reimbursable Cost of the Work.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.5.6 Notwithstanding the above, costs of other material and equipment, temporary facilities and related items procured by the Contractor will generally be included in Negotiated Support Services, but some may be designated for inclusion in the Specified General Conditions. Reference the Cost Responsibility Matrix Exhibit for clarification of such items. All furniture, technology, communication (including cell phones), personal transportation (including pickup trucks) and clerical equipment therein, temporary controls (except cleaning and erosion controls), project identification and temporary signage, and delivery by the Contractor, on-site storage, sheds and handling are Specified General Conditions.

§ 7.6 Miscellaneous Costs

§ 7.6.1 The actual, net costs of premiums for that portion of insurance, exclusive of builder's risk insurance, and bonds required by the Contract Documents that can be directly attributed to this Contract are included in the Specified General Conditions and are not separately reimbursable. Builder's risk insurance shall be included as a part of the Negotiated Support Services, unless the Owner elects to procure the builder's risk insurance directly.

§ 7.6.2 Use or similar taxes, B&O and income taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable are included in the Fee and are not separately reimbursable. Sales tax on the Contract Sum is paid with and based upon each Application for Payment.

§ 7.6.3 Fees and assessments for Project-specific permits, licenses and inspections of governmental authorities having jurisdiction for which the Contractor (but not Subcontractors) is required by the Contract Documents to pay shall be included as part of the Negotiated Support Service.

§ 7.6.4 Fees of laboratories for tests required of the Contractor by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of the revised General Conditions or by other provisions of the Contract Documents.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the GMP. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of the revised General Conditions or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 Costs for electronic equipment and software, including computers, are included in Specified General Conditions and are not separately reimbursable.

§ 7.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.8 Expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work are included in Specified General Conditions and are not separately reimbursable.

§ 7.6.9 The cost of preapproved warehousing of stored materials or equipment subsequently incorporated into the Work are covered by the Specified General Conditions and are not separately reimbursable.

§ 7.6.10 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work may be allowed as a reimbursable cost of the Work with the Owner's prior written approval. This does not include commuting or travel related costs from the Contractor's home office or from any personnel's home, as these costs are covered by the Specified General Conditions and are not separately reimbursable.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior written approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201-2017, as revised.

§ 7.7.3 Negotiated Support Services

Negotiated Support Services by the Contractor may be accomplished and will be reimbursed as Costs of the Work within the GMP, consistent with Cost Responsibility Matrix Exhibit, only as follows:

- .1 Negotiated Support Services described and included in the GMP.
- .2 Units of Negotiated Support Services may be accomplished by the Contractor during the Construction Phase, subject to prior written Owner approval, if the Cost of the unit of the Work is less than \$35,000.
- .3 Subcontractor bidding requirements are not applicable to Negotiated Support Services.

Overhead and profit shall not be contained within the Negotiated Support Services as the Fee is applied to the Negotiated Support Services.

§ 7.7.4 Specified General Conditions

The fixed, lump sum contained in the Contractor's response to the RFP for certain identified general conditions Work and services, consistent with the Cost Responsibility Matrix Exhibit, to be provided by the Contractor as Specified General Conditions. The Specified General Conditions Work is to be performed by the Contractor with its own forces in most instances and also includes any Preconstruction Services and activities that occur after the GMP is established through execution of the GMP Amendment. Overhead and profit shall not be contained within the fixed, lump sum Specified General Conditions amount as the Fee is applied to the Specified General Conditions.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Contractor; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Contractor.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below, as all such items are covered by the Contractor's Fee or are at the Contractor's risk:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2.1, or as may be provided in Article 11;
- .2 Expenses of the Contractor's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .5 Costs due to the negligence or failure of the Contractor, Subcontractors of any tier and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the GMP to be exceeded;
- .8 Costs for services incurred during the Preconstruction Phase except as specifically allowed herein;
- .9 Direct payments by the Owner (if any) for the building permit and related permits, reserve capacity fees, and plan-check fees, including SEPA, design review, and land use fees are not a part of the Cost of the Work or the GMP;
- .10 Overtime wages, unless preapproved by the Owner;
- .11 Main or home office accounting, data processing, software, hardware or computer-related costs not included in the Specified General Conditions;
- .12 Penalties and fines imposed by a governmental entity;
- .13 Safety costs not included in the Negotiated Support Services or Specified General Conditions;
- .14 Liquidated damages;
- .15 Except as included within the Specified General Conditions or as allowed under Section 7.1 through 7.7, reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office;
- .16 Legal, consultant, or claims-related expenses;
- .17 Warehousing in the Contractor's facility;

- .18 Bonuses, profit sharing, incentive compensation and other discretionary payments; and
- .19 Business licenses.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained. If the Contractor is offered discounts and/or rebates based upon prompt payment, the Contractor shall offer the Owner the opportunity to take advantage of such discount and/or rebate, and if the Owner makes such a prompt payment then the Owner shall only be charged the price as reduced by the discount and/or rebate. If the Owner declines the opportunity, the Contractor may keep any such discounts and/or rebates it achieves through its own prompt payment. If the Contractor does not provide the Owner the opportunity to participate, then the Contractor may only charge the net costs after consideration of discounts and rebates. The Contractor shall notify the Owner in a timely manner of the availability of such cash discounts, rebates, or refunds.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or other appropriate agreements with the Contractor. The Contractor shall comply with the applicable requirements of RCW 39.10 and the approved Subcontracting Plan, and the provisions of RCW 39.10 shall take precedence over any inconsistent provisions of the Contract Documents except to the extent that the Contract Documents are explicit in matters such as how the Fee is applied. Except as specified below, the Contractor shall assemble the bidding materials, manage the bidding process, and shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall deliver such bids to the Architect and Owner with an indication as to which bids the Contractor intends to accept. The Owner then has the right to review the Contractor's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. Unless all bids are rejected, subcontract bid packages shall be awarded to the "responsible" and responsive bidder submitting the low responsive bid. Determination of "responsibility" shall comply with the requirements of RCW 39.10, RCW 39.04.350, and other applicable Washington law.

- .1 Other than Work under the Specified General Conditions and Negotiated Support Services, all Work on the Project shall be competitively bid as required by RCW 39.10. The Contractor may, subject to RCW 39.10 and the Subcontracting Plan, organize and solicit bids for the subcontract work in manners allowed by RCW 39.10, but the Contractor may not use alternates without approval of the Owner.
- .2 The Contractor shall bid out the subcontract bid packages in accordance with its approved Subcontracting Plan. The Contractor shall document and report monthly to the Owner on its procurement process. The Owner's written approval is required for changes to the Subcontracting Plan.
- .3 Before initially soliciting bids for the first subcontract bid package, the Contractor shall submit, and the Owner shall reasonably approve, final bid package estimates for all subcontract bid packages in the approved Subcontracting Plan. The sum of all the final bid package estimates in the Subcontracting Plan shall not exceed the MACC.
- .4 When in the best interests of the Project and when critical to the successful completion of a subcontract bid package and the Owner consents, the Owner and Contractor may make a prebid determination of Subcontractor eligibility in accordance with RCW 39.10. In addition, if the anticipated subcontract value will exceed \$3 million and the Owner consents, the Contractor may select a Subcontractor in accordance with the alternative procedure specified in RCW 39.10.385 and following the approval requirements of RCW 39.10.
- .5 As part of its Subcontracting Plan, the Contractor shall promptly notify the Owner of Work (other than Negotiated Support Services and Specified General Conditions) that it will seek to self-perform. The Contractor, including its subsidiaries and affiliates, may bid on a subcontract bid package if the Work within the subcontract bid package is customarily performed by the Contractor, if the Contractor has, in the Owner's reasonable opinion, aggressively sought competition, if the bid opening

is managed by the Owner, if notification of the Contractor's intention to bid is included in the public solicitation of bids for the bid package, and if the Contractor otherwise complies with RCW 39.10. In no event may the total value of subcontract work performed by the Contractor exceed thirty percent (30%) of the MACC negotiated as part of the GMP Amendment. The Contractor must provide staff to superintend and manage Work it performs in subcontract bid packages with individuals separate and distinct from the staff involved in the overall management of this Contract. The Contractor shall coordinate subcontract bid package Work it performs with the Work of Subcontractors.

- .6 The Contractor shall require a bid bond from Subcontractors bidding Work expected to cost more than \$300,000, and all Subcontractors awarded a subcontract in excess of \$300,000 shall provide a performance and payment bond for the subcontract amount. The costs of such Subcontractor bonds must be included within the Subcontractor's bid price.
- .7 The Contractor's solicitations of subcontract bid packages shall be made in accordance with the following procedures:
 - .1 A representative from the Owner will be present at each bid opening to observe the procedure.
 - .2 The Contractor shall advertise solicitations for bids at least fourteen (14) days in advance of the bid opening date in the Columbian and Portland Daily Journal of Commerce. In addition, Contractor shall post a notice on the OMWBE website of the bid opportunity.
 - .3 Bidders may obtain the bid results by telephone from the Contractor.
 - .4 Responsiveness requirements and bidding procedures will be described in each solicitation and shall be reviewed with the Owner prior to advertising a bid package solicitation.
- .8 The services performed by the Contractor in soliciting subcontract bid packages are covered under the Preconstruction Services Fee for packages bid prior to the GMP Amendment, and shall be covered by the Specified General Conditions for all packages bid subsequent to execution of the GMP Amendment.
- .9 The Contractor shall ensure compliance with RCW 39.10 and 39.04.350 and with all the above requirements for Subcontractor solicitation, and subcontracts shall conform to the requirements of RCW 39.10 and 39.04.350.
- .10 The Contractor shall promptly contract with the selected bidder, and in no case longer than forty-five (45) days unless otherwise approved by Owner, and shall promptly deliver a copy of each subcontract to the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee, except for any contracts awarded under RCW 39.10.385 which shall include a maximum allowable subcontract cost. If a Subcontract is awarded under RCW 39.10.385, the Contractor shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor, and these Subcontractors shall be audited prior to final payment in accordance with Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Contractor and any cost-reimbursable Subcontractors shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. This requirement also applies to any Subcontractor of any tier that submits a Claim. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, including electronically, the Contractor's and Subcontractors' original records and accounts, including complete documentation supporting accounting entries, books, ledgers, computerized records, daily reports, emails, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract, the Project, or any Claim. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. The Contractor and its Subcontractors shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted in compliance with the Contract Documents to the Owner by the Contractor, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents. The

Contractor's submission of this Application constitutes a certification that the Work is current on the Construction Schedule, unless otherwise noted on the Application. The Application shall be in a form acceptable to the Owner.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 11.1.3 Applications for Payment

§ 11.1.3.1 Draft Application. By the twenty-first (21st) day of each month, the Contractor shall submit to Architect and Owner a report on the current progress of the Work, projected to the end of the month, as compared to the Contractor's Construction Schedule, an updated Construction Schedule, and a draft, itemized Application for Payment for Work projected to the end of the month and prepared on AIA G 702 & G 703 forms or similar, approved by the Owner. This shall not constitute a payment request. The Contractor, the Architect and the Owner shall meet within the next five (5) days and confer regarding the current progress of the Work, projections, and the amount of payment to which the Contractor is entitled. The Architect or the Owner may request the Contractor to provide data substantiating the Contractor's right to payment as the Owner or the Architect may require, such as copies of requisitions from Subcontractors of any tier, lien releases, and certified payroll records, and reflecting retainage as provided elsewhere in the Contract Documents. The Contractor shall not be entitled to make a payment request, nor is any payment due the Contractor, until such data is furnished.

§ 11.1.3.2 Payment Request. Within ten (10) days after the Contractor, the Owner, and the Architect have met and conferred regarding the updated draft application for payment, and the Contractor has furnished all progress information required and all data requested by the Owner or Architect under Section 11.1.3.1 above, the Contractor has submitted current meeting minutes, daily reports, as-built drawings and commissioning logs (if requested) and an updated (bar chart) Construction Schedule, the Contractor may submit a payment request in the agreed-upon amount, in the form of an itemized Application for Payment, for Work properly performed during the prior calendar month on City specified forms or similar, form supplied or approved by the Owner, along with a lien release on a form approved by the Owner from each Subcontractor for whose Work the Owner paid the Contractor for the prior month. The Application shall also state that prevailing wages have been paid in accordance with the pre-filed statements of intent to pay prevailing wages on file with the Owner and that all payments due Subcontractors of any tier from the Owner's payment the prior month have been made. Any payment request shall not be valid unless it complies with the requirements of the Contract Documents and the Contractor submits all documentation required by the Contract Documents. The submission of the Application for Payment constitutes a certification that the Work is current on the Construction Manager's Construction Schedule, unless otherwise noted on the Application for Payment.

§ 11.1.3.3 Payment. See Section 9.6.1 of the revised General Conditions.

§ 11.1.3.4 Disputed Amounts. If the Contractor believes it is entitled to payment for Work performed during the calendar month under review, in addition to the agreed-upon amount, the Contractor may, also within seven (7) days after the meeting in Section 11.1.3.1, submit along with the approved Application for Payment a separate written payment request specifying the exact additional amount due, the category in the Schedule of Values in which the payment is due, the specific Work for which the additional amount is due, and why the additional payment is due. Furthermore, for the submittal to be considered, pursuant to WAC 296-127-320, the Contractor and all Subcontractors shall file with the Owner by the same date certified copies of all payroll records relating to the additional amount sought.

§ 11.1.3.5 Stored Materials. If authorized by the Owner, an Application for Payment may include a request for payment for material delivered to the Project site and suitably stored and for completed preparatory Work. An Application for Payment may include a request for payment for material stored off the Project site if authorized in writing by the Owner and provided that the Contractor complies with or furnishes satisfactory evidence of the following:

- .1 The material will be placed in a bonded warehouse that is structurally sound, dry, lighted, secure and suitable for the materials to be stored; temperature conditioned as needed determined by items being stored per manufacturer's recommendations.
- .2 The warehouse is approved in writing by the Owner. The Owner generally will not approve locations beyond a 25-mile radius of the Project absent special circumstances.
- .3 Only materials for the Project are stored within the warehouse (or a secure portion of a warehouse set aside for the Project, clearly labeled and tied to a detailed itemized inventory list).

- .4 The Contractor furnishes the Owner a certificate of insurance extending the Contractor's insurance coverage for damage, fire and theft to cover the full value of all materials stored, or in transit.
- .5 The warehouse (or secure portion thereof) is continuously under lock and key, and only the Contractor's authorized personnel shall have access.
- .6 The Owner shall at all times have the right of access to stored materials in the possession of the Contractor.
- .7 The Contractor assumes total responsibility for the stored materials.
- .8 The Contractor furnishes to the Owner proofs of title bearing the Owner's name, satisfactory evidence that the Contractor has paid for the materials in question, certified lists of materials stored, bills of lading, invoices, photographs and other information as may be required, and shall also furnish notice to the Owner when materials are moved from storage to the Project site.

§ 11.1.4 With each Application for Payment, the Contractor shall submit the reports required in Section 3.3 and its current detailed computerized substantiation (such as a detailed job cost report) and lien releases; the Contractor shall also submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence if requested by the Owner or Architect. The Contractor may be required to account on a monthly basis as part of its Application for Payment for the Cost of the Work for certain portions of the Project that the Owner defines prior to setting the GMP – such Costs of the Work will include allocation of Specified General Conditions as well as building system and other shared costs. Upon request, the Contractor shall demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor, less (2) that portion of those payments attributable to the Contractor's Fee, plus (3) payrolls for the period covered by the present Application for Payment.

§ 11.1.4.1 As a part of its Application for Payment, the Contractor shall promptly, following the date of execution of the GMP Amendment, prepare a comprehensive list of equipment that it anticipates to use on the Project, whether owned or rented. The Contractor shall maintain and submit to the Owner monthly a detailed equipment inventory of all equipment it has purchased and charged as a Cost of the Work or job-owned through aggregate rentals and shall prepare an equipment rental report that identifies the equipment rented for the month and identifies the source of the rented equipment. The inventory shall include (1) the original acquisition cost and date, (2) the Owner-approved fair market value of the equipment when first used on the Project, and (3) the final disposition.

§ 11.1.5 At least thirty (30) days before the first Application for Payment, the Contractor shall submit to the Owner and Architect a Schedule of Values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner or Architect may require. These schedules, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Each Application for Payment shall be based on the most recent Schedule of Values submitted by the Contractor in accordance with the Contract Documents. The Schedule of Values shall allocate the entire GMP among the various portions of the Work, except that the Contractor's Fee, Negotiated Support Services, Specified General Conditions, and Contingency shall be shown as single separate items. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the GMP allocated to that portion of the Work in the Schedule of Values.

§ 11.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the GMP allocated to that portion of the Work in the Schedule of Values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of the revised General Conditions, subject to approval limits and process defined by Owner's Change Order policy;

- .2 Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Contractor's Fee. The Contractor's Fee shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation;
- .6 Subtract amounts, if any, for which the Architect or Owner has withheld or nullified a Certificate for Payment or the Owner has withheld payment as provided in Section 9.5 of the revised General Conditions;
- .7 Subtract the statutory retainage of five percent (5%) of the completed Cost of the Work (items .1 - .6 above) as a fund for the protection and payment of the claims of any person or entity arising out of the Work and the State with respect to taxes, pursuant to RCW 60.28, if a retainage bond is not presented.
- .8 Subtract the amount, if any, for Work that remains uncorrected and for which the Owner or Architect has previously withheld a Certificate for Payment as provided in Article 9 of the revised General Conditions; and
- .9 Subtract the amount for Work performed or defects discovered since the last payment application, any amount for which the Owner or Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of the revised General Conditions.

§ 11.1.8 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 11.1.9 In taking action on the Contractor's Applications for Payment, the Architect and Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect or Owner has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 11.1.4 or other supporting data; that the Architect or Owner has made exhaustive or continuous on-site inspections; or that the Architect or Owner has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner. Payment by the Owner shall not constitute final approval of the Work done or the amount due.

§ 11.1.10 The Contractor shall obtain Affidavits of Wages Paid from each Subcontractor of any tier following the Subcontractor's completion of its Work on the Project.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum including incentive or reduction for Apprenticeship program, if applicable except for statutory retainage, shall be made by the Owner to the Contractor within 30 days of the Owner's Final Completion of all the Work under the Contract, which shall occur when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of the revised General Conditions, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work (including final accountings from any cost reimbursable Subcontractors) and a final Application for Payment;
- .3 Final Completion has been achieved;
- .4 a final Certificate for Payment has been issued by the Architect; and
- .5 the requirements for Final Acceptance in the revised General Conditions are met.
- .6 Affidavit of Wages Paid forms have been approved for the Contractor and each Subcontractor of any tier.

The Owner's final payment to the Contractor shall be made in accordance with the Contract Documents.

§ 11.2.2 The Owner's auditors will review and report in writing on the Contractor's final accounting (including the final accounting of any mechanical and/or electrical subcontracts under RCW 39.10.385) within 60 days after delivery of the final accounting to the Architect and Owner by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 11.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the revised General Conditions. The time periods stated in this Section supersede those stated in Section 9.4.1 of the revised General Conditions. Neither the Architect nor the Owner is responsible for verifying the accuracy of the Contractor's final accounting. The Owner's final accounting shall not preclude or in any way limit the Owner from exercising its rights of audit under other provisions of this Contract.

§ 11.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to invoke the dispute resolution procedure of Article 15 of the revised General Conditions. Commencement of the dispute resolution procedure for the disputed amount shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to commence the dispute resolution procedure within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the undisputed amount in the final Application for Payment.

§ 11.2.4 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Section 7.1.1 and not excluded by Section 7.9 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the GMP.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Disputes

All Claims shall be brought and resolved in accordance with Article 15 of the revised General Conditions.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the GMP Amendment

§ 13.1.1 If the Owner and the Contractor do not reach an agreement on the GMP, which agreement can only be established through execution of the GMP Amendment by both parties, the Owner may terminate this Agreement upon not less than seven days' written notice to the Contractor, and the Contractor may terminate this Agreement, upon not less than seven days' written notice to the Owner. Notwithstanding anything herein to the contrary, the Owner shall maintain the right to terminate for cause or convenience as described in Article 14 of AIA Document A201, as revised.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Contractor shall be compensated for Preconstruction Phase services and Work reasonably and necessarily performed prior to receipt of a notice of termination, not to exceed the approved Preconstruction Services costs, in accordance with the terms of this Agreement. In no event shall the Contractor's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the GMP Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Contractor for the Owner's convenience and without cause, or for cause, and the Contractor may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017, as revised.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Contractor shall be equitably compensated for Preconstruction Phase services and Work reasonable and necessarily performed prior to receipt of a notice of termination. In no event shall the Contractor's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the GMP Amendment, the Owner shall pay to the Contractor an amount calculated as follows, which amount shall be in addition to any compensation paid to the Contractor under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;

- .2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services; and
- .4 Adjust for statutory retainage in accordance with RCW 60.28.

§ 13.1.6 The Owner shall also pay the Contractor fair compensation, to the extent permitted in Sections 7.1 through 7.8 and not excluded by Section 7.9 of this Agreement, either by purchase or rental at the election of the Owner, for any equipment purchased solely for the Project and now owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 7. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Contractor will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Contractor for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated and unless the Owner has already paid the Contractor for such related costs. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Contractor will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Contractor the costs necessarily incurred by the Contractor because of such termination but only if the Owner authorized the execution of the Subcontract or if the Owner and Contractor executed a GMP Amendment covering that Subcontractor's portion of the Work.

§ 13.2 Termination or Suspension Following Execution of the GMP Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017, as revised. This Section 13.2 applies after the Owner and Contractor have executed the final GMP Amendment, not initial Early Bid Package Amendments (commonly referred to as mini-MACCs). Any termination prior to the execution of the final GMP Amendment shall be addressed through Section 13.1.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 The Contract may be terminated by the Owner for cause as provided in Article 14 of AIA Document A201–2017, as revised.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience the Owner shall pay the Contract a fee in accordance with Article 14 of AIA Document A201–2017, as revised

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017, as revised; in such case, the GMP and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, as revised, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017, as revised, or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, as revised, neither party to the Contract shall

assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.3 Insurance and Bonds

§ 14.2.1 The Contractor shall maintain the insurance and provide bonds as set forth in the Contract Documents, including Article 11 of the revised General Conditions.

§ 14.3 Project Information.

§ 14.3.1 The Contractor and all Subcontractors shall submit Project information required by the state Capital Projects Advisory Review Board.

§ 14.4 Permits, Fees and Notices

§ 14.4.1 The Owner will obtain and pay directly for any permits and governmental fees listed as the Owner's responsibility in the Specifications. Except for Subcontractor permits and fees, the Contractor shall obtain all additional permits and licenses necessary for the execution of the Work and pay all permit, utility, miscellaneous, and ancillary fees required. The costs of such permits and licenses shall be as an allowance in the Negotiated Support Services, except for Subcontractor permits, fees, and licenses which costs shall be included within the subcontract bid packages. Subcontractor bid packages shall include all permits and fees necessary for such Subcontractors to perform their work, including without limitation all fees, licenses, permits, plan check fees for deferred submittals, application fees and review fees for any and all shop drawings or bidder designed systems, any inspection fees not covered by the initial building permit fee, including reinspection fees, government fees, Department of Labor and Industries fees, renewals and penalties, and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work. The Owner will not pay, and the Contractor will not be reimbursed for, license fees or any renewals or penalties. Any such costs not paid for by the Owner shall be covered by the Specified General Conditions.

§ 14.4.2 The Contractor shall coordinate and schedule all Work with permitting agencies, utility companies, and other such agencies determined to have jurisdictional authority necessary for completion of the Work. The Contractor shall be responsible for providing all information, documents, and fees to the permitting agencies, utility companies, and other such agencies determined to have jurisdictional authority as necessary to timely obtain and coordinate permits, utility and other such connections. The Contractor shall obtain all permit renewals during the course of the Work.

§ 14.4.3 The Contractor will be responsible for providing information to the Department of Labor and Industries and/or local jurisdiction.

§ 14.4.4 The Contractor will be responsible for any renewals of and penalties arising from the building permit and other permits and governmental fees.

§ 14.4.5 The Contractor shall provide copies of all approved permits to the Owner within 5 business days of receipt of such permits.

§ 14.4.6 Prior to Final Acceptance, the approved, signed permits shall be delivered to the Owner. Certificates of inspection, use, and occupancy shall be delivered to Owner upon completion of the Work in sufficient time for occupation of the Project in accordance with the approved Construction Schedule.

§ 14.4.7 In the event of any conflict between the permit requirements and the Contract Documents, the requirements of the permit shall take precedence and Contractor shall not be entitled to any change in the Contract Sum or Contract Time.

§ 14.5. E-Verify: Contractor shall enter into and register a Memorandum of Understanding with the Department of Homeland Security E-Verify program within 60 days of executing this Agreement. Contractor shall ensure all Contractor employees and any subcontractors assigned to perform Services under this Agreement are eligible to work in the United States. Contractor shall provide compliance verification upon City's request.

ARTICLE 15 SCOPE OF THE CONTRACT

§ 15.1 This Contract represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both Owner and Contractor.

§ 15.2 The following documents comprise the Contract:

- .1 AIA Document A133™-2019, as revised, Standard Form of Agreement Between Owner and Contractor as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a GMP
- .2 AIA Document A133™-2019, Exhibit A, GMP Amendment, if executed
- .3 AIA Document A201™-2017, as revised, General Conditions of the Contract for Construction
- .4 Other documents, if any, listed below:

RFP dated _____

RFFP dated _____

Contractor's Response to RFP dated _____

Contractor's RFFP Final Proposal Form dated _____

Contractor's Schedule dated _____

Addenda ____ through ____

Exhibit 1 – Pre-Construction Work Plan

Exhibit 2 – Cost Responsibility Matrix

This Agreement is entered into as of the day and year first written above.

CITY OF VANCOUVER
A municipal corporation

CONTRACTOR:
Inline Commercial Construction

Lon Pluckhahn, City Manager

Signature

Date

Printed Name /Title

Attest:

Date

Natasha Ramras, City Clerk

Approved as to form:

Jonathan Young, City Attorney

DRAFT AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Fire Station 8 Seismic Upgrades

THE OWNER:

(Name, legal status and address)

City of Vancouver

THE ARCHITECT:

(Name, legal status and address)

LSW Architects, 610 Esther St, Ste 200, Vancouver WA 98660

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Owner or Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor (although the Owner does not waive any third-party beneficiary rights it may otherwise have as to Subcontractors of any tier), (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction services and administrative procedures required by the Contract Documents, whether completed or partially completed and whether new construction or modification of existing structures, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. Where the Work requires construction that modifies or interfaces with existing structures, the Contractor shall ensure that the Work is compatible and interfaces with the as-built conditions of the existing structures.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, the Project Manual, studies, surveys, models, sketches, drawings, specifications, and other similar materials through which the Work to be executed by the Contractor is described.

§ 1.1.8 Project Manual

The Project Manual is a volume or volumes usually assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract, Specifications, and other related materials such as construction details and schedules.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results and design intent.

§ 1.2.2 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.3 Organization of the Specifications into divisions, sections and articles, and arrangement of 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, nor shall it remove the Contractor's obligation to complete all of the Work when coordination between the Specifications and the Drawings or coordination between subcontracts is required.

§ 1.2.4 Unless otherwise stated in the Contract Documents, words not defined in the Contract Documents that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.5 If the Contractor discovers that the Specifications, Drawings, or Project Manual fail to particularly describe the material or kind of goods to be used in any place or discovers an inconsistency or ambiguity between the Specifications, Drawings, or Project Manual or an inconsistency or ambiguity arises internally within the Specifications, Drawings, or Project Manual, then the Contractor shall make inquiry of the Architect as to what is best suited. Upon review and acceptance by Owner and Architect, the material that a competent contractor, having participated in a preconstruction phase and following accepted construction industry standards, would use in its place to produce first quality finished Work shall be considered a part of the Contract without adjustment to the GMP or Contract Time. If the Contractor discovers such an inconsistency or ambiguity and fails to notify the Architect, there shall be no adjustment to the GMP or Contract Time.

§ 1.2.6 In the event of a conflict or discrepancy among or in the Contract Documents that cannot be resolved by interpreting the Contract Documents as a single, integrated document and giving effect to each provision therein, interpretation shall be governed in the following priority, with an Addendum or a revision to a Contract Document having precedence over the original document and later Addenda having precedence over earlier:

- .1 Agreement (revised A133-2019, including exhibits) (written amendments having precedence)
- .2 Any Supplementary Conditions
- .3 These revised General Conditions (A201-2017)
- .4 Any Special Conditions
- .5 Specifications
- .6 Drawings (large-scale having precedence over small-scale, and written or computed dimensions having precedence over scaled dimensions)
- .7 RFP and RFFP Documents
- .8 Material and Systems Schedules

In the event that Work is shown on Drawings but not contained in Specifications, the Work as shown shall be provided at no change in the GMP or Contract Time, according to specifications to be issued by the Architect that are consistent with and reasonably inferable from the Work shown on the Drawings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles and identified references to Sections in this document, (3) the titles of other documents published by the American Institute of Architects, or (4) published codes and standards.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. Reference in the singular to an article, device, item or piece of equipment shall include the larger of the number of such articles indicated in the Contract Documents or the number required to complete the installation. Specification and Drawing notes may include incomplete sentences where words such as “shall,” “shall be,” “the Contractor shall,” and similar phrases shall be supplied by inference. The term(s) “approved,” “or approved” and “as approved” mean approved by the Architect, and by any governing codes and officials, and by any quality standards specified as applicable to the work in question. “As directed” means as directed by the Architect or the Owner. The term “provide” means to furnish and install. The term “as required” or “as necessary” means as required by applicable codes or standards, and/or as may be required for proper completion of the work. Divisions and Sections included are listed in the “Table of Contents,” together with the number of pages in each Section. The Contractor shall check its copies of the Specifications with the “Table of Contents” to ensure that they are complete

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect’s consultants shall, subject to any right of the Owner, be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will, subject to any right of the Owner, retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect’s or Architect’s consultants’ reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work under the Contract Documents and with respect to the Project. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. All copies of the Instruments of Service, except the Contractor’s record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Contractor may retain one record set. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect’s consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

Contractor acknowledges that drawings, specifications, Instruments of Service, or any other information or documentation that Contractor receives in digital form, including but not limited to any building information model, may contain transmission or translation errors and are issued for convenience only, and thus Contractor may only rely upon hard copy documents and digitally signed pdfs. Any electronic files other than digitally signed pdf files may be provided for the convenience of the Contractor only. Neither the Architect nor the Owner shall be liable for any inaccuracy or incompleteness in information contained in an electronic copy other than digitally signed pdf files of an Instrument of Service. Electronic files other than digitally signed pdf files are not Contract Documents and cannot be relied upon as identical to the Contract Documents. Use of information contained in electronic files other than digitally signed pdf files is at the Contractor’s risk and without liability to the Architect or the Owner. The Contractor may be required to execute the Architect’s electronic document release to obtain the Instruments of Service other than hard copy and digitally signed pdf files. To the extent that the Contractor or its Subcontractors of any tier create building information models for the Project, Contractor shall share such building information models with the Owner upon Substantial Completion.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner of this Project is the City of Vancouver. The Owner shall designate in writing one or more Designated Representative(s) who is/are authorized in writing to act on behalf of Owner with respect to specific Owner rights and responsibilities under the Contract. No officer, agent, representative, or employee of the Owner shall be personally responsible for any liability arising under the Contract.

§ 2.2 Information and Services Required of the Owner

§ 2.2.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 14.4 of the Agreement, the Owner shall secure and pay for necessary environmental approvals, easements, assessments and related charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. The Contractor is responsible to secure and pay for licenses and all other permits, subject to Section 14.4 of the Agreement.

§ 2.2.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative and does not include any employees of the Owner.

§ 2.2.3 If the employment of the Architect terminates, the Owner shall employ a successor and whose status under the Contract Documents shall be that of the Architect.

§ 2.2.4 The Owner may furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Contractor should assume that the locations of any underground or hidden utilities, active or abandoned underground tanks, plumbing or electrical runs indicated in the survey or Contract Documents are shown in approximate locations, but the Contractor is responsible for making all utility location checks and verifications. The Contractor is responsible for performing all utilities investigation and location work to determine the precise locations thereof. The Contractor shall not damage or interrupt utilities or utilities services of any kind. The Contractor shall bear the risk of loss arising out of its Work which directly or indirectly damages or interrupts any utilities or utilities services, or causes or contributes to damages of any nature, except in the case where the loss resulted because the utility location information provided by Owner or Utility Provider was inaccurate.

§ 2.2.5 The Owner shall, upon reasonable written request, furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.6 Unless otherwise provided in the Contract Documents, upon written request the Owner shall furnish to the Contractor one digital copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly or materially fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of itself or the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) day period after receipt of notice from the Owner to commence and continue to make reasonable progress toward the correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. In the event such deficiencies threaten the health or safety of the Owner's employees or occupants, or exist within fourteen (14) calendar days of the date on which the Owner is scheduled to begin operations at the Project, the Owner may immediately proceed to

correct such deficiencies without notice. In either such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services and expenses made necessary by such default, neglect, or failure. The right of the Owner to correct the Work pursuant to this Section 2.4 shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of itself or others. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15. The Owner's exercise of its rights under the Section shall not adversely affect any warranties applicable to the Project.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, bonded, and insured in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved or accepted pursuant to Section 3.12.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.1.4 The Contractor shall be and operate as an independent contractor in the performance of the Work and shall have complete control over and responsibility for all personnel performing the Work. The Contractor is not authorized to enter into any agreements or undertakings for or on behalf of the Owner or to act as or be an agent or employee of the Owner.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract and the GMP Amendment by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated its personal observations with the requirements of the Contract Documents. By executing this Contract and the GMP Amendment, the Contractor represents and acknowledges that the GMP is reasonable compensation for all the Work, that the Contract Time is adequate for the performance of the Work, and that it has carefully examined the Contract Documents and the Project site, including any existing structures and access thereto, and any drawings of the existing conditions available from the Owner, and that it has satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods, products, supplies, work, services and other items to be furnished and all other requirements of the Contract Documents, as well as the surface conditions and other foreseeable matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof, including but not limited to those conditions and matters affecting: transportation, access, local regulations, disposal, handling and storage of materials, equipment and other items; availability and quality of labor, water, electric power, utilities, drainage; availability and condition of roads; normal climatic conditions and season; physical conditions at the Project site and the surrounding locality; topography and ground surface conditions; and equipment and facilities needed preliminary to and at all times during the performance of the Work. The failure of the Contractor to fully acquaint itself with any such condition or matter shall not in any way relieve the Contractor from the responsibility for performing the Work in accordance with the Contract Documents and within the Contract Time and the GMP and shall not be the basis of a Claim.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Drawings, Specifications, and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.4, shall take field measurements and verify any existing conditions, including all general reference points and any interfering existing conditions, related to that portion of the Work, and shall observe any conditions at the site affecting it and shall carefully compare and verify such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing such activities. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors,

omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and the Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner or Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Owner and Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Owner or Architect may require. The Contractor shall comply with all applicable federal, state, county and city laws, ordinances, rules and regulations, including, but not limited to, the latest applicable versions of:

- .1 International Building Code (with Washington State amendments);
- .2 Uniform Plumbing Code;
- .3 Uniform Mechanical Code;
- .4 International Fire Code;
- .5 National Electrical Code;
- .6 Washington State Energy Code;
- .7 Washington State Rules and Regulations for Barrier-Free Design;
- .8 Americans With Disabilities Act (ADA);
- .9 American National Standards Institute (ANSI A117.1)
- .10 Federal and State Safety Codes as adapted and/or modified by State and Local Ordinances; and
- .11 Any applicable municipal codes.

§ 3.2.4 Subject to the restrictions in Sections 3.2.4 and 3.2.4.1.4 of the Agreement as to what constitutes a compensable design error or omission, if the Contractor believes that additional cost or time is involved because of any design errors or omissions or inconsistencies noted by the Contractor, or clarifications or instructions issued by the Owner or Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit any Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.5, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless the Contractor recognized or reasonably should have recognized such error, inconsistency, omission or difference and failed to report it to the Owner and the Architect. If the Contractor performs any construction activity it knows or reasonably should have known involves an error, inconsistency or omission in the Contract Documents or reports referenced therein without such notice to the Owner and the Architect, the Contractor shall be responsible for such performance and shall bear the attributable costs for correction.

§ 3.2.5 Any investigations of hidden or subsurface conditions by Owner or its consultants have been made for design purposes. There is no guarantee, express or implied, that the conditions indicated are representative of those existing throughout the site or that unforeseen developments may not occur. Contractor is solely responsible for reasonably interpreting the information and extrapolating beyond the testing location, including each individual boring, test pit or other location. At Owner's request, Contractor shall make available to Owner the results of any site investigation, test borings, analyses, studies, or other tests conducted by or in possession of Contractor or any of its agents. Contractor represents that it is familiar with the Project Site and has reviewed all information made available to Contractor or listed in the Contract Documents, including the soils report and civil plan referred to therein concerning the conditions of the Project Site. Contractor shall undertake such further investigations and studies as may be necessary or useful to determine Project conditions with pre-approval from Owner. Contractor shall exercise special care in executing subsurface work in proximity of known subsurface utilities, improvements, and easements.

§ 3.2.6 The Contractor shall do no work, except work related to means and methods and temporary controls, without applicable Drawings, Specifications, or written modifications or, where required, Shop Drawings, Product Data, or Samples, unless instructed to do so in writing by the Architect and the Owner.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, assembly details and procedures, and for coordinating all portions of the Work under the Contract. The Contractor shall review any such specific instructions concerning construction means, methods, techniques, sequences, assembly details or procedures, shall evaluate the jobsite safety thereof, and shall advise the Owner and Architect (a) if the specified instruction or procedure deviates from what the Contractor considers to be good construction practice or jeopardizes jobsite safety, (b) if following the instruction or procedure will negatively affect any warranties, or (c) if the Contractor objects to the instruction or procedure. The Contractor shall propose alternative instructions or procedures acceptable to the Contractor, for which no increase in the GMP or Contract Time will be made. The Contractor shall not proceed with such alternative instruction or procedure without the written acceptance of the Owner and the Architect, and the Contractor shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's principals, agents, employees, Subcontractors of any tier and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors of any tier.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. Under no condition shall a section of Work proceed prior to preparatory work having been completed, cured, dried and otherwise made satisfactory to receive the related Work. Responsibility for timely installation of all materials and equipment rests solely with the Contractor, who shall maintain coordination control at all times. The Contractor shall require its Subcontractors of any tier to be familiar with all aspects of the Contract Documents related to their Work. The Contractor shall ensure that the responsible Subcontractor has carefully examined all preparatory work that has been executed to receive its Work and has notified the Contractor (who shall notify the Owner and Architect in writing) of any defects or imperfections in preparatory work that will, in any way, affect satisfactory completion of the Work. The lack of such notification, or the failure of the Contractor to inspect such portions of the Work, shall constitute an acceptance of preparatory work and a waiver of any later claim of defect therein.

§ 3.3.4 The Contractor shall perform such detailed examination, inspection and quality control and surveillance of the Work as will ensure that the Work is progressing and is being completed in strict accordance with the Contract Documents, including the then current issue of the Drawings, Specifications, and accepted Shop Drawings. The Contractor shall be responsible for examination, inspection and quality control and surveillance of all Work performed by any Subcontractor of any tier. The Contractor shall determine when it is necessary to perform, and shall perform, tests (as a Cost of the Work and in addition to those requested by the Owner or required by the Specifications or any other provision of the Contract Documents) to verify its inspections or to ensure that the Work is being completed in strict accordance with the Contract Documents. The Contractor shall report known errors, omissions, or inconsistencies to the Architect and the Owner before commencing Work. Inspections by or on behalf of the Owner shall not constitute approval of the Work.

§ 3.3.5 The Contractor shall plan and lay out all Work in advance of installation so as to coordinate all Work without delay or revision. The Contractor is responsible for coordination of all the Drawings related to specific locations. The Contractor shall establish and maintain existing lot lines, restrictions, existing survey markers of any kind, and bench marks. The Contractor shall establish and maintain all other lines, levels and bench marks necessary for the execution of the Work and take necessary steps to prevent their dislocation or destruction. The Contractor shall employ a professional land surveyor registered in the State of Washington to initially lay out and be responsible for the accuracy of the Work and to create and submit to the Owner an as-built survey and accurate utility as-builts for use by the Owner. The Contractor shall provide an as-built surveyed site plan noting all site improvements, including but not limited to building corners, storm, sewer, drains, grade and invert elevations, edge of pavement, signs, markings, back of curb, and sidewalks.

§ 3.3.6 The Contractor's superintendent shall provide a Daily Report to the Owner for each work day during the Contract time, whether or not any Work is performed, and for each non-work day in which Work is performed on the site as more fully detailed Section 3.3.2.3 of the Agreement. The Daily Report shall be completed on a form approved by the Owner and Architect, and submitted to the Owner and the Architect on the work day following the day covered in the Report, as required by the Contract Documents.

§ 3.3.7 Contractor shall ensure that its owner(s) and employees, and those of its Subcontractors, have no economic interest in any public works contract in violation of chapter 42.23 RCW (Code of Ethics for Municipal Officers - Contract Interests) and City of Vancouver Charter Section 11.07 (Personal Interest). Contractor shall remove, at its sole cost, any of its or its Subcontractors' employees if their continued participation would violate these provisions.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Unless stated otherwise in the GMP Amendment, to the extent that the Owner allows the Contractor to utilize the Owner's utilities, the Contractor shall install temporary meters to quantify the Contractor's required reimbursement to the Owner for those utilities.

§ 3.4.2 After the GMP Amendment has been executed, the Owner and the Architect may consider a written request for the substitution of material or products in place of those specified in the Contract Documents only as described in the Specifications and following the procedures of the Contract Documents. The written request must include the specifications for the material or product and any proposed change in the GMP or Contract Time. The Contractor may make substitutions only with the written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. By requesting a substitution, the Contractor represents that it has personally investigated the proposed material or product and determined that it is equal or better in all respects to that specified (or if not equal or better in all respects, the Contractor shall identify such deficiencies), that the same or better warranty will be provided for the substitution, that complete cost data, including all direct and indirect costs of any kind, has been presented, that it waives any other known or unknown Claim for an increase in the GMP or Contract Time, that it has coordinated with affected Subcontractors, and the substitution will not impact other parts of the Work, and that it will coordinate the installation of the substitution if accepted and make all associated changes in the Work.

§ 3.4.2.1 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall remove from the Work and Work site any employee or other person who the Owner reasonably considers objectionable without change in the GMP or Contract Time.

§ 3.4.2.2 No employees of either the Contractor or any of its Subcontractors of any tier shall harass, intimidate, have physical contact with, or engage in other verbal or physical conduct or communication of a sexual, intimidating or harassing nature with employees, nor create an intimidating, hostile or offensive environment. The Contractor shall remove from the Work and Work site any employee or other person who has engaged in such actions or who the Owner reasonably considers objectionable. Without limiting the generality of the foregoing, the Contractor shall ensure by appropriate provisions in each subcontract agreement that the Contractor may remove from the Work and Work site any Subcontractor or Subcontractor's employee who has engaged in such action. At no change to the GMP or Contract Time, the Contractor shall remove from the Work and Work site any employee or other person pursuant to this Section. Failure to comply with these requirements is grounds for immediate termination of the Contract for cause.

§ 3.4.3 The Contractor shall develop and administer a system for maintaining site security and tracking all individuals with access to the Project site. All contractors, suppliers, and visitors who come onto the Project site shall be required to display an identification badge or sticker on their person (such as a hard hat sticker), which shall be provided by the Contractor as part of the Contract Sum. The Contractor shall coordinate the distribution of badges or stickers, shall maintain a list of all contractors, suppliers, and visitors with permission to be on the Project site (including identifying any personnel required to have a background check pursuant to Section 3.4.2.1 above), and shall make such list available to the Owner or Architect upon request. All badges or stickers shall include a personal identifier (such as a numerical designation), correlated with the Contractor's list of approved personnel and visitors, to allow the Owner or Architect to identify the contractor, supplier, or visitor

§ 3.4.4 Prevailing Wages

§ 3.4.4.1 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) as determined by the Industrial Statistician of the Department of Labor and Industries. The

State of Washington prevailing wage rates applicable for this public works project, which is located in Clark County, may be found at the following website address of the Department of Labor and Industries:

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

Based on the bid submittal deadline for this project, the applicable effective date for prevailing wages for the pre-construction phase of this Project is Wednesday, January 15, 2025. Any Early Bid Packages that may be issued will utilize the preconstruction phase wage rates. Prevailing wage rates for the Construction Phase will be based on the signature dates of the GMP Amendment.

To the extent that there is any discrepancy between the attached or provided schedule of prevailing wage rates and the published rates applicable under WAC 296-127-011, or if no schedule is attached, the applicable published rates shall apply with no increase in the GMP. It is the Contractor's responsibility to ensure that the correct prevailing wage rates are paid. The Contractor shall provide the respective Subcontractors with a schedule of the applicable prevailing wage rates. Questions relating to prevailing wage data should be addressed to the Industrial Statistician upon request.

Mailing Address:	Department of Labor and Industries Prevailing Wage Office PO Box 44540 Olympia, WA 98504-4540
Telephone:	360-902-5335
Facsimile:	360-902-5300
Website:	https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates

§ 3.4.4.2 Pursuant to RCW 39.12.060, in case any dispute arises as to what are the prevailing rates of wages for work of a similar nature, and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the Director of the Washington State Department of Labor and Industries, and his or her decision therein shall be final and conclusive and binding on all parties involved in the dispute.

§ 3.4.4.3 The Contractor shall defend, indemnify and hold the Owner harmless, including attorneys' fees, from any violation or alleged violation by the Contractor or any Subcontractor of any tier of Chapter 39.12 RCW ("Prevailing Wages on Public Works") and Title 51 RCW ("Industrial Insurance").

§ 3.4.5 The Contractor shall comply with all applicable provisions of Chapter 49.28 RCW ("Hours of Labor").

§ 3.4.6 Pursuant to Chapter 49.70 RCW ("Worker and Community Right to Know Act") and WAC 296-901 *et seq.*, the Contractor shall provide the Owner copies of and have available at the Project site a workplace survey or material safety data sheets for all "hazardous" chemicals under the control or use of Contractor or any Subcontractor of any tier at the Project site. Contractor shall not be entitled to any additional Contract Time or compensation arising from its failure or alleged failure to comply with this statute or regulation.

§ 3.4.7 All products and materials incorporated into the Project as part of the Work shall be certified as "asbestos-free" and "lead-free" by United States standards. At the completion of the Project, the Contractor shall submit Certificates of Asbestos-Free and of Lead-Free Materials, certifying that all materials and products incorporated into the Work meet the requirements of this section.

§ 3.4.8 The Contractor shall be responsible for labor peace on the Project and shall at all times use its best efforts and exercise its best judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes or strikes where reasonably possible and practical under the circumstances, and shall at all times maintain Project-wide labor harmony. The Contractor shall provide the Owner advance notice, to the extent possible, of any anticipated strikes.

§ 3.4.9 Materials shall conform to the manufacturer's standards in effect at the date of execution of the Contract Documents and shall be installed in strict accordance with the manufacturer's instructions, specifications and directions. The Contractor shall, if required in writing by the Owner or Architect, furnish satisfactory evidence

regarding the kind and quality of any materials identifying thereon the source, and warranting their quality and compliance with the Contract Documents.

§ 3.4.10 Apprenticeship

§ 3.4.10.1 Pursuant to RCW 39.04.320, no less than fifteen percent (15%) of the Labor Hours shall be performed by apprentices, unless a different amount is permitted or otherwise required by law.

§ 3.4.10.2 Apprenticeship hours shall be performed by participants in training programs approved by the Washington State Apprenticeship Council.

§ 3.4.10.3 "Labor Hours" means the total hours of workers receiving an hourly wage who are directly employed on the site of the public works project. "Labor Hours" includes hours performed by workers employed by the Contractor and all Subcontractors working on the Project. "Labor Hours" does not include hours worked by foremen, superintendents, owners, and workers who are not subject to prevailing wage requirements of Chapter 39.12 RCW.

§ 3.4.10.4 During the term of this Contract, the Owner may adjust the apprenticeship labor hour requirement if the Contractor has demonstrated to the satisfaction of the City that it has utilized good faith efforts to meet the established requirement. Good faith effort may be demonstrated by providing documentation that demonstrates one or more of the following scenarios:

- .1 Apprentice retention issues;
- .2 Apprentice to journey person ratio requirements;
- .3 Classroom training resulting in less hours on the project;
- .4 Added or deleted work affecting apprenticeship participation;
- .5 Displace member of current workforce;
- .6 Inability to find available apprentices;
- .7 Conflict with federal requirements;
- .8 Technical or prescriptive warranty work, or
- .9 No available apprenticeship programs.

§ 3.4.10.5 The Contractor shall be entitled to a monetary incentive of \$10,000 for meeting the goals identified in this Section 3.4.10. The Contractor shall be subject to a monetary penalty of \$100 per labor hour for failure to meet the goals identified in this Section 3.4.10 if a good faith effort has been documented. The Owner cannot within existing resources identify an expected cost value to be included in the bid associated with failing to meeting the goals.

§ 3.5 Warranty

§ 3.5.1 Warranty shall be one (1) year from the Substantial Completion date. The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or explicitly permit otherwise. The Contractor further warrants that the Work will be performed in a skillful and workmanlike manner, will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or explicitly permit. Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved and authorized, will be considered defective. Unless such actions are caused by, or are the responsibility of the Contractor, the Contractor's warranty excludes remedy for damage or defect caused by abuse by the Owner, alterations to the Work not executed or supervised by or through the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor is not relieved of its general warranty obligations by the specification of a particular product or procedure in the Contract Documents. Warranties in the Contract Documents shall survive completion, acceptance, final payment, and the correction period identified in Section 12.2. The Contractor shall secure, assign if requested by the Owner, and furnish directly to the Owner, all written warranties required by the Contract documents, first executed by the applicable Subcontractor and those suppliers and manufacturers furnishing materials or equipment for the Work and subsequently countersigned by the Contractor, which shall extend to the Owner all rights, claims, benefits and interests that the Contractor may have under express or implied warranties or guarantees against the Subcontractor, supplier or manufacturer for defective or non-conforming Work. Warranty language shall comply with the Contract Documents and shall be submitted to the Owner and Architect at least thirty (30) days prior to ordering the warranted material or equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor shall secure, assign if requested by the Owner, and furnish directly to the Owner all written warranties required by the Contract Documents, first executed by the applicable Subcontractor and those suppliers and manufacturers furnishing materials for the Work, and subsequently countersigned by the Contractor, which shall extend to the Owner all rights, claims, benefits and interests that the Contractor may have under express or implied warranties or guarantees against the Subcontractor, supplier or manufacturer for defective or non-conforming Work. Prior to furnishing Owner with written guarantees and warranties, the Contractor shall provide copies to the Owner and Architect for review.

§ 3.5.3 At its sole cost and expense, Contractor shall promptly pay and perform, to the reasonable satisfaction of Owner or its transferee, any repairs required of Contractor, in fulfillment of the foregoing warranty obligations. Should Contractor fail to perform any non-emergency maintenance or repair required pursuant to this Subparagraph within fifteen (15) days of notice thereof from Owner or any transferee of Owner shall be entitled to recover directly from Contractor the cost thereof (including attorneys' fees) plus interest at the statutory rate thereon until repaid, immediately and upon demand by Owner therefore. Owner or its assigns shall be entitled to make emergency repairs to the Project whether or not within the warranty obligations of Contractor hereunder without providing Contractor prior notice thereof; provided however that notice and demand for repayment for such emergency repairs shall be provided to Contractor as soon thereafter as is reasonably practicable. Contractor's warranties shall be in addition to any manufacturer's warranties and Contractor agrees to assist Owner with prosecution of manufacturer's warranties. As used above, the term "defects" shall mean (a) any portions of the Work not in conformance with the Contract Documents or (b) any portion of the Work which is otherwise incomplete, defective, not performed in a sound and workmanlike manner, or not performed in accordance with applicable laws, rules, codes, and ordinances, orders, or similar binding pronouncement enacted by any local, state or federal government agency, bureau, department or government.

§ 3.5.4 The obligations under this section shall survive Final Acceptance.

§ 3.6 Taxes

§ 3.6.1 The Owner will pay Washington State sales tax through the Contractor in addition to the GMP. Washington State sales tax shall not be included in the bid amount. The Contractor shall pay sales, consumer, use, B&O, income, and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received, whether or not yet effective or merely scheduled to go into effect. Tariffs are not reimbursable and shall not increase the reimbursable Contract Sum regardless of when implemented.

§ 3.6.2 The GMP may be adjusted by the amount of an after-imposed federal tax or duty on materials used or consumed for the Project (e.g. tariffs), in accordance with Section 6.3 Changes in Work, under the following conditions. (1) The federal tax or duty must be imposed or increased after the date of bid opening; (2) Contractor must certify in writing that no amount for such newly imposed federal tax or duty or rate increase was included in the Contract Price, as a contingency reserve or otherwise, nor reimbursed; (3) the actual cost increase in Contractor-paid taxes must be in excess of \$500; (4) the adjustment must be the amount of actual cost(s) paid for this Project and must not include cost mark-ups, supervision, fees, general conditions, overhead or any other costs; and (5) Contractor must provide written notice of any change in such tax or duty no later than 14 days after Contractor had actual knowledge that that such new or changed tax or duty would impact the actual cost to this Project of materials used or consumed on this Project (the latest notice date is 14 days after date of first payment of such after-imposed tax or duty for Project materials). Any such request for adjustment to GMP must be based on actual cost impact to the Project, supported by bills and records of payment for materials used or consumed on this Project and identify specific tariffs, taxes or duties that have changed and what materials on the Project have been affected. The Owner may audit the records of the Contractor to verify changes in after-imposed or after-relieved tax or duties (e.g. tariffs). Contractor must give notice of any relief from any existing or after-imposed changes to tax or duty are relieved or reduced during the Contract, and Owner may request evidence and/or audit related records and may make adjustment to reflect any actual reduction in such tax or duty costs related to the Project.

§ 3.7 Fees, Notices and Compliance with Laws

§ 3.7.1 N/A

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. The Contractor shall coordinate and schedule all Work with entities having jurisdiction over the site, permitting agencies, utility companies, and other such agencies determined to have jurisdictional authority necessary for completion of the Work. The Contractor shall keep the Owner informed of communications from these authorities and utilities. The Owner will assist the Contractor with such coordination and scheduling, but the Owner is not responsible for any delays caused by such permitting agencies, utility companies, and other such agencies determined to have jurisdictional authority. The Contractor shall be responsible for providing all information and documents to the permitting agencies, utility companies, and other such agencies determined to have jurisdictional authority within 30 days after issuance of the Notice to Proceed as necessary to obtain and coordinate permits, utility and other such connections. The Contractor shall obtain all permit renewals during the course of the Work. The Contractor is responsible for providing information and fees to the Department of Labor and Industries.

§ 3.7.3 If the Contractor observes that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate modification. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in any soils reports made available to the Contractor by the Owner or in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide written notice to the Owner and the Architect before conditions are disturbed and in no event later than three (3) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the GMP or Contract Time, or both, consistent with the requirements of the Contract Documents. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing. Any Claim of the Contractor arising from the Architect's determination or recommendation shall be made in accordance with the dispute resolution procedure in Article 15. No increase to the GMP or the Contract Time shall be allowed if the Contractor knew or reasonably should have known of the concealed conditions prior to its executing the GMP Amendment.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall immediately notify the Owner and Architect by telephone and email. Upon receipt of such written notice, the Owner and Contractor shall promptly cooperate with each other and take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations that may affect the human remains, burial markers, archaeological sites or wetlands until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the GMP and Contract Time, if any, arising from the existence of such remains or features shall be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the GMP all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has made reasonable and timely written objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, except sale tax on progress payments, less applicable trade discounts;

- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the GMP but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the GMP shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual, reasonable costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2, except where the allowance is based upon a unit price specified in the Agreement.

Allowances are defined in the Contract Documents due to the uncertainty in the scope, price and quantity of the Allowance items at the time the Contract was executed. Whenever actual costs are more or less than the Allowance, the GMP will be adjusted accordingly by Change Order. The Contractor must provide the Owner with written notice of its intent to exceed an Allowance amount, with estimates and justification (providing the Owner with the opportunity to approve or reject the excess costs) before exceeding an Allowance amount.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with sufficient time to avoid delay in the Work.

§ 3.9 Project Management Staff

§ 3.9.1 The Contractor shall employ a competent, computer literate, and experienced project manager, project engineer, superintendent and necessary assistants as identified in the Contractor's proposal who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The Contractor shall use an experienced superintendent, who shall be an employee of the Contractor and shall remain on the Project site whenever Subcontractors of any tier are present and not less than eight hours per day, five days per week, unless the job is closed down due to a legal holiday, a general strike, conditions beyond the control of the Contractor, termination of the Contract in accordance with the Contract Documents or unless Final Completion is attained. The project manager shall also be an employee of the Contractor.

§ 3.9.2 The project manager, project engineer, and superintendent shall be employees of the Contractor, one or more of whom shall remain on the Project site whenever Subcontractors of any tier are present and not less than eight hours per day, five days per week, unless the job is closed down due to a legal holiday, a general strike, conditions beyond the control of the Contractor, or termination of the Contract in accordance with the Contract Documents or unless Final Completion is attained. After Substantial Completion, a qualified, experienced representative of the Contractor with authority to bind the Contractor shall remain on site as needed until Final Completion is attained. Similarly, appropriate Subcontractor supervisory personnel (foreman level or above) shall also be present at the Project site whenever Subcontractor Work of any tier is being performed whether before or after Substantial Completion. Neither the superintendent nor the Contractor's project manager or project engineer shall be changed without the approval of the Owner, which shall not be unreasonably withheld. The Contractor's superintendent shall not be employed on any other project during the course of the construction Work.

§ 3.9.3 Within ten (10) days after issuance of the conditional Notice to Proceed, the Contractor shall furnish to the Owner and Architect:

- .1 A chain-of-command organizational chart which includes all supervisory personnel, including the project manager, the project engineer and the superintendent, assistant superintendent and lead foreman, that the Contractor intends to use on the Work. The chart shall specify any limits of authority for each person, including any limitation on his or her ability to speak for and bind the Contractor, as well as any limits on decision-making authority with respect to specific dollar values, Contract Time, and issues affecting quality of the Work.
- .2 Complete resumes, including all past and current projects, for the project manager, project engineer, and superintendent. The Owner reserves the right to reject personnel reasonably believed to be unsuitable or incompatible for the Project. The Contractor shall replace any rejected personnel with an agreeable replacement at no increase in the GMP or Contract Time.
- .3 A list of telephone numbers for all key personnel of the Contractor and its principal subcontractors for purposes of contacting personnel after hours in the event of an emergency. The list shall be periodically updated as necessary to ensure the Owner has the most current information.

§ 3.9.4 The individuals identified in response to Section 3.9.3 shall be the same as those identified in the Contractor's RFP response. Contractor shall not change the superintendent, project manager, project engineer, or any individual identified in the Contractor's RFP response without the Owner's consent, which shall not unreasonably be withheld or delayed. The Owner reserves the right, after consultation with the Contractor, to require the Contractor to replace a superintendent, project engineer, project manager or other assistants if the Owner determines that such replacement is in the best interests of the Project. The Owner shall exercise such right in a reasonable manner. The Owner shall be entitled to exercise the same rights concerning any replacement.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, submit a preliminary draft preconstruction and construction schedule. The Contractor, following execution of the GMP Amendment, shall submit for the Owner's and Architect's information a preliminary Contractor's construction schedule for the Work (as approved, the "Construction Schedule") consistent with the requirements of the Contract Documents. The Construction Schedule shall not exceed time limits current under the Contract Documents, shall be revised at least monthly and as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Contractor shall request payment for the monthly update line item with each Application for Payment, based upon the percentage completion of the Project. For any month that the Contractor fails to submit an updated Construction Schedule, the Contractor shall not be entitled to any payment for scheduling for that month, and the percentage of the scheduling line item represented by that month's percentage of completion of the Work shall be permanently deducted from the GMP by Change Order.

§ 3.10.1.1 The Contractor shall promptly notify the Owner and Architect in writing of any proposed change in the Construction Schedule or the Contract Time or of any event which could delay performance of any item of the Work, stating the cause of the delay, expected duration of the delay, the anticipated effect of the delay on the Construction Schedule, and the action being taken to correct the delay. Notification of potential delay does not constitute a change in the Contract Time; only a Change Order signed by the Owner can amend the Contract Time. The Contractor shall comply with Article 15 with regard to any delays that it believes are the responsibility of the Owner or are otherwise the subject of a Claim for additional Contract Time.

§ 3.10.1.2 If any proposed Construction Schedule submitted sets forth a date for Substantial Completion for the Work or any phase of the Work beyond the Dates of Substantial Completion established in the Contract Documents (as the same may be extended as provided in the Contract Documents), the Contractor shall submit to the Architect and the Owner for their review a narrative description of the means and methods which the Contractor proposes to use to expedite the progress of the Work to ensure timely completion of the various phases of the Work and Substantial Completion of the Work as a whole in accordance with the Substantial Completion date. Regardless of the cause of any delay, the Contractor shall exercise reasonable efforts to bring the Project back into compliance with the approved Construction Schedule.

§ 3.10.1.3 To the extent that the Contractor or any Subcontractor or material supplier of any tier is responsible for the delay, the Contractor shall take all necessary action to bring the Project back into compliance with the approved Construction Schedule, including without limitation increasing the number of personnel on the Project and implementing overtime and double shifts without additional costs to the Owner.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule in accordance with the Contract Documents, shall submit a submittal schedule for the Architect's and Owner's approval. The Architect's and Owner's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated and submitted with the Construction Schedule, and (2) allow the Architect and Owner reasonable time to review submittals in accordance with the Specifications and submittal procedures. The Contractor shall contemporaneously provide the Owner with a copy of all submittals. The Contractor should expect a response time of at least fourteen days for the Architect's review and at least twenty-one days for review by the Architect's consultants. Complex, inter-related or multiple submittals will often take longer. Neither the Owner nor the Architect can guarantee response times from governmental authorities, such as permitting agencies or review of any required deferred submittals. If the Contractor fails to submit and update a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in GMP or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in accordance with the most recent schedules submitted to the Owner and Architect and shall promptly notify the Owner of any substantial deviations from those schedules. The Contractor's Construction Schedule shall be based upon a critical path method ("CPM") analysis of construction activities and sequence of operations needed for the orderly performance and completion of all separable parts of the Work, in the form of a precedence diagram and activity listing and time-scaled, all in accordance with the Contract and within the Contract Time. The Contractor shall utilize scheduling software for its CPM scheduling. The Schedule shall be resource loaded and provided to the Owner in electronic, readable format. It shall include the Date of Commencement, any milestone dates identified in the Specifications, the Date(s) of Substantial Completion, and the Date(s) of Final Completion in accordance with the Contract Documents. The Schedule shall be updated monthly and submitted with the Contractor's Application for Payment. The Critical Path shall be clearly indicated on the Contractor's Construction Schedule.

§ 3.10.4 The Contractor shall not be entitled to any adjustment in the Contract Time, the Construction Schedule, or the GMP, or to any additional payment of any sort by reason of the loss or use of any float time, including time between the Contractor's anticipated completion date and end of the Contract Time, whether or not the float time is described as such on the Construction Schedule. To ensure that the Owner is substantively aware and effectively able to mitigate any Project delays, the Contractor shall not be entitled to any extension of time, compensable or otherwise, for any delay that occurred during any time the Contractor has not timely submitted an updated Construction Schedule as required by the Contract Documents.

§ 3.10.4.1 Any float time to activities not on the critical path shall belong to the Project, and may be used by the Project to optimize its construction process. Any float time between the end of the final construction activity and the final completion date shall belong to the Owner, and may be used by the Owner in determining if additional contract days are to be awarded for changes in the contract or for delays to the contract caused by the Owner. The Contractor will not be entitled to any adjustment in the Contract Time, the Construction Schedule, or the GMP, or to any additional payment of any sort by reason of the Owner's use of float time between the end of the final construction activity and the final completion date or be reason of the loss or use of any float time, including time between the Contractor's anticipated completion date and end of the Contract Time, whether or not the float time is described as such on the Contractor's Construction Schedule.

§ 3.10.5 The Contractor shall attend and participate in and ensure applicable Subcontractors of any tier attend and participate in:

- .1 A preconstruction meeting;
- .2 Regular weekly on-site Project status meetings scheduled by the Owner or Architect to review progress of the Work, to discuss the Contractor's progress reports, to obtain necessary Owner's or Architect's approvals, and generally to keep the Owner and Architect informed and involved in the progress of the Project; and
- .3 Other meetings scheduled from time to time by the Owner or by the Architect to review progress of the Work and other pertinent matters.

§ 3.10.6 Should the Contractor fail to meet any scheduled date as shown, the Contractor shall, upon request, be required at its own expense to submit within ten (10) days of the request a revised proposed schedule and at its own expense to increase its work force and working hours (e.g., through weekends, overtime and additional shifts) to bring the actual completion dates of the activities into conformance with the approved Construction Schedule. The Contractor shall also submit a revised proposed schedule at its own expense (a) with each of its applications for payment and (b) within ten (10) days of notice from the Owner or Architect that the sequence of work varies significantly from that shown on the Construction Schedule. The revised proposed schedule will be reviewed at the construction site one (1) week prior to the due date of the Contractor's monthly application for payment. If requested by the Owner, the Contractor shall provide copies of two (2) tabular reports: (a) a total float report clearly indicating the current critical path through project completion, and (b) a report of activity sorted by early start dates commencing with the previous update and including all undated activities during the previous month. Actual progress of the previous month will be recorded and incorporated into the update. The Owner may withhold any progress payment until such time as the Contractor has provided an approved revised Construction Schedule in a form satisfactory to the Owner and Architect.

§ 3.10.7 The activities defined in the Construction Schedule shall represent the planned durations in anticipation of normal manpower and equipment utilization and durations of whole working days. No activity duration shall exceed fifteen (15) working days unless approved by the Owner for non-construction activities such as procurement, delivery or submittal activities. All durations shall be determined based upon resource planning under contractually defined onsite work conditions. All durations shall be of whole working days. In calculating activity durations, normal inclement weather shall be considered. The Contractor shall schedule the Work to minimize the effect of weather. The Contractor shall also protect the Work site from the effects of weather or take other necessary measures such that the Work can be completed within the time established in the Contract and include these provisions in the Construction Schedule as appropriate.

§ 3.11 Documents and Samples at the Site

The Contractor shall maintain at least weekly and make available, at the Project site, a record set of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the record set of the approved or accepted Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The location of all existing or new hidden piping, valves, conduit, cabling and utilities, as located during the course of construction, shall be appropriately marked until the actual field location dimensions and coordinates are incorporated on the as-built drawings, and mechanical and electrical deviations and changes shall be included. The documents shall include all Architectural, Mechanical, Electrical, Structural, Landscape, and Civil as-built drawings, whether changes occur or not, using Owner-approved CAD software. These documents, as well as the approved permit set of plans, shall be available to the Architect and Owner at the site and reviewed with them on a weekly basis. Upon Final Completion of the Work, the Contractor shall transfer all as-built information in a clear and legible manner as described in the Contract Documents and in compliance with all requirements of local governmental entities, shall certify in writing that these documents reflect complete and accurate “as-built” conditions and shall deliver the following in a clear, clean and legible manner and in compliance with all requirements of local governmental authorities: (i) complete, integrated copies of the documents in both paper form in good condition and in electronic form in the same format as originally created by the Architect; (ii) the approved permit set of plans; and (iii) the full-size record documents, Shop Drawings, Specifications, Addenda, maintenance manuals and warranties to the Architect for submittal to the Owner in accordance with the provisions of the Contract Documents. Satisfactory maintenance of up-to-date as-built drawings on a monthly basis will be a requirement for approval of progress payments.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples and/or assemblies or mock-ups that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is for the Contractor to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review and acceptance or approval of such submittals by the Owner or Architect is subject to the limitations of Section 4.2.7 and shall not constitute an approval or acceptance of the Contractor’s means and methods or a waiver or modification of any requirement of the Contract Documents. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be (but are not required to be) returned by the Owner or Architect without action.

§ 3.12.5 The Contractor shall be responsible for tracking the status of submittals. The Contractor shall review for compliance with the Contract Documents, note any deviations from the Contract Documents, approve in writing, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule accepted by the Owner and Architect or, in the absence of an

accepted submittal schedule, with reasonable promptness and frequency and in such sequence and uniform flow rate consistent with the submittal schedule as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. The Contractor shall notify the Owner and Architect of any expedited review required. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action, which will not constitute an Owner-caused delay to the Contractor. At the time of submission, the Contractor shall inform the Architect in writing if expedited review is requested or if there is any deviation in the Shop Drawings, Product Data, or Samples from the requirements of the Contract Documents (which deviations must be subsequently accepted by the Owner before the Work may proceed). So far as practicable, each Shop Drawing or Product Data submittal shall bear a cross reference note referring to Drawing or detail numbers on the Drawings showing the same Work in order to facilitate checking of Shop Drawing or Product Data and their prompt return to the Contractor. Shop Drawings for interrelated work shall be submitted at approximately the same time.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved each submittal, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

- .1 Each submittal shall bear a stamp or specific written indication that the Contractor has satisfied its responsibilities under the Contract Documents with respect to the review of the submission. The Contractor's superintendent shall initial each submittal. Submittals that are simply passed through by the Contractor without proper Contractor review and coordination as required, are not acceptable.
- .2 Each submittal shall be accompanied by a completed Submittal Cover Sheet, as included in the Project Manual or provided by the Architect, which shall clearly identify applicable Specification Section and paragraph number(s), material, supplier, pertinent data such as catalog numbers, and the use for which it is intended.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review and acceptance of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been reviewed and no exceptions taken by the Architect or the Work is otherwise authorized to proceed.

§ 3.12.8 The Work shall be in accordance with accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval, review or acceptance of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written acceptance of the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval, review or acceptance thereof. Any corrections or modifications to Shop Drawings made by the Architect shall be deemed accepted by the Contractor, without change in GMP or Contract Time, unless the Contractor provides the Architect with written notice at least three (3) working days before commencing any Work from such Shop Drawings and complies with the change procedures in the Contract Documents. The Contractor shall make all corrections requested by the Architect and, when requested by the Architect, provide one or more corrected submittals without change in the GMP or Contract Time.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval or acceptance of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to Section 4.2.7, the Architect will review, accept or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.12.11 Any mechanical and electrical systems shown in the Drawings are diagrammatic (other drawings may also be diagrammatic.) The Contractor shall have responsibility for coordination and clash detection with other building systems. The Contractor shall provide dimensioned shop/installation Drawings and details for all plumbing piping, ductwork, heating system piping, underground hot water piping, hot water boilers, and accessories to indicate complete systems. Shop Drawings shall be to 1/4" = 1'-0" minimum scale in all mechanical rooms, boiler rooms, as well as where accuracy or location is necessary for coordination or installation purposes. Ductwork shop drawings shall include a separate drawing to not less than 1/4" = 1'-0" scale showing all duct penetrations through structure (floors, roof, and walls) dimensioned, and all equipment locations, weights and pad details for all HVAC equipment. Critical dimensions of all equipment pad, and pipe or duct penetrations through structure shall be included.

§ 3.13 Use of Site

The Contractor shall use the site solely for Work on this project. Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, permits, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Materials and equipment on site shall be used directly in the Work and not stored on site after their use is complete. There shall be no use of existing on-site facilities (parking, toilets, etc.) without the Owner's prior approval. Portions of the site may be occupied and in use during construction. The Contractor is responsible to coordinate its Work with any such occupation or use at no increase to the GMP or Contract Time and at no disruption to the occupancy or use.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly in accordance with the Contract Documents. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching to the sole satisfaction of the Owner.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.14.3 Existing structures and facilities, including but not limited to buildings, landscaping, utilities, topography, fencing, streets, curbs, and walks, that are damaged or removed due to excavations or other construction work of the Contractor, shall be patched, repaired or replaced by the Contractor to the satisfaction of the Owner, the owner of such structures and facilities, and governmental authorities having jurisdiction. In the event the governmental authorities require that the repairing and patching be done with its own labor and/or materials, the Contractor shall abide by such regulations and it shall pay for such work at no change in the GMP or Contract Time.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area, including roads, free from accumulation of waste materials, rubbish, dust, dirt and debris caused by operations under the Contract. The Contractor shall furnish portable containers on site for use by all trades. At the Owner's request and, in any event, at Substantial Completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor for any cleanup costs. The Contractor shall only use waste receptacles provided by the Contractor and shall appropriately dispose of any waste material off site.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Owner's agents with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law and subject to the following conditions, the Contractor shall defend, indemnify and hold harmless the Owner, its Council members, officials, employees, consultants, and agents, and employees, successors and assigns of any of them ("Indemnified Parties") from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees incurred on such claims and in proving the right to indemnification, arising out of or resulting from the acts or omissions of the Contractor, a Subcontractor of any tier, their agents, and anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable ("Indemnitor"). Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.1.1 The Contractor shall fully defend, indemnify, and hold harmless the Indemnified Parties for the sole negligence of the Indemnitor. The indemnification obligations provided in this Section 3.18 do not extend to claims, damages, losses, and expenses arising from the sole negligence of the Indemnified Parties.

§ 3.18.1.2 If such claims are caused by or are resulting from the concurrent negligence of (i) the Indemnified Parties, and (ii) Indemnitor, then the Contractor shall be obligated to defend, indemnify, and hold harmless the Indemnified Parties only to the extent of the Indemnitor's negligence. The Contractor agrees to being added by the Owner as a party to any arbitration or litigation with third parties in which the Owner alleges indemnification or contribution from the Contractor, any of its Subcontractors of any tier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. The Contractor agrees that all of its Subcontractors of any tier shall, in their subcontracts, similarly stipulate; in the event any does not, the Contractor shall be liable in place of such Subcontractor(s) of any tier. To the extent any portion of this Section 3.18 is stricken by a court or arbitrator for any reason, all remaining provisions shall retain their vitality and effect.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor of any tier, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor of any tier under workers' compensation acts, disability benefit acts, or other employee benefit acts. After mutual negotiation of the parties, the Contractor waives immunity as to the Owner, the Architect and their respective consultants only under Title 51 RCW, "Industrial Insurance."

§ 3.18.3 To the extent the wording of this Section 3.18 would reduce or eliminate an available insurance coverage of the Contractor or the Owner, this Section 3.18 shall be considered modified to the extent that such insurance coverage is not affected.

§ 3.19 Substitutions

§ 3.19.1 Substitution requests after the Contract has been executed are disfavored; the Owner and the Architect may consider a written request for the substitution of material or products only under exceptional circumstances as specified in the Contract Documents. The written request must include all information designated in the Contract Documents, including without limitation the specifications for the material or product and any proposed change in the GMP or Contract Time.

§ 3.19.2 By requesting a substitution, the Contractor represents that it has personally investigated the proposed material or product and determined that it is equal or better in all respects to that specified, that the same or better warranty will be provided for the substitution, that complete cost data, including all direct and indirect costs of any kind, has been presented, that it waives any other known or unknown Claim for an increase in the GMP or Contract Time, and that it will coordinate the installation of the substitute if accepted and make all associated changes in the Work.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement. The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture or engineering in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Architect” means the Architect or the Architect’s authorized representative and does not include any employees of the Owner.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect whose status under the Contract Documents shall be that of the Architect.

§ 4.2 Administration of the Contract

§ 4.2.1 The Owner will administer the Agreement with assistance from the Architect. The Architect shall have authority to act on behalf of the Owner only as specifically identified in the Contract Documents or as otherwise theorized in writing by the Owner.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with and to keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Neither the Architect nor the Owner will have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor’s rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1. The presence of the Architect or the Owner at the site shall not in any manner be construed as assurance that the Work is being completed in compliance with the Contract Documents, nor as evidence that any requirement of the Contract Documents of any kind, including notice, has been met or waived. The Contractor shall reimburse the Owner for any amounts paid to the Architect for site visits made necessary by the fault of the Contractor or by defects and deficiencies in the Work.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. Neither the Architect nor the Owner will be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents.

Neither the Architect nor the Owner will have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. Neither the Architect nor the Owner will be responsible for defining the extent of any subcontract or dealing with disputes between the Contractor and third parties.

§ 4.2.4 Communications

Except as otherwise provided in the Contract Documents or when direct communication has been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect in all communications that relate to or affect the Architect's services or professional responsibilities or matters arising out of or relating to the Contract. The Contractor shall simultaneously provide the Owner with a direct copy of all written communications to the Architect, including all notices, requests, transmittals, substitutions, RFIs, Claims, and potential changes in the GMP or Contract Time but not including Shop Drawings, Product Data or Samples. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor except as provided in the Contract Documents. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's observations and evaluations of the Work and the Contractor's Applications for Payment, the Architect will make recommendations to and otherwise assist the Owner to determine the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 Both the Architect and the Owner have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, the Architect or the Owner will have authority to require inspection or testing of the Work in accordance with Section 13.5, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner or their representatives to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, accept or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, Samples, and other submittals required by the Contract Documents, but only for the limited purpose of checking for conformance with information given and the design intent expressed in the Contract Documents. The Architect's action will be taken with reasonable promptness in accordance with the submittal schedule accepted by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, weights or gauges, fabrication processes, coordination with the work of other trades, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval or acceptance of a specific item shall not indicate approval of an assembly of which the item is a component. The Contractor shall clearly note, and the Architect shall not be required to search out, any deviations from the Contract Documents not clearly identified by the Contractor, nor shall the Architect be required to review partial submissions of those for which submission for correlated items have not been received. Regardless of how a submittal is marked, the Contractor should not presume that the Architect has reviewed a submittal in every aspect.

§ 4.2.8 The Architect or Owner will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will make observations, make recommendations and otherwise assist the Owner to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section

9.10; and issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents and pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, Drawings and Specifications and any modifications thereto on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2.11, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made for them.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect will endeavor to secure faithful performance of the Contract by both Owner and Contractor, will not show partiality to either, and will not be liable to the Contractor for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents and agreeable to the Owner.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within a reasonable time and any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site or to supply materials or equipment. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.1.3 A Subcontractor of any tier is a Subcontractor or a Sub-subcontractor.

§ 5.1.4 The designation of terms in this Article 5 is not meant to change or alter the definitions contained in Chapter 60.28 RCW ("Lien for Labor, Materials, Taxes on Public Works"), Chapter 39.12 RCW ("Prevailing Wages on Public Works"), or other statutory definitions of a subcontractor for the purposes of such statutes.

§ 5.1.5 Responsible Subcontractor: This designation reflects a person or entity who is qualified and can document training, experience, license, and special certification to perform work, supply materials, or provide equipment required and specified by the Contract Documents.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Within ten (10) days after issuance of the Conditional Notice to Proceed, the Contractor shall notify the Owner and Architect in writing of all persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design (i.e., at least two percent (2%) of the GMP), as well as the proprietary names and the suppliers of the principal items or systems of materials and equipment proposed for the Work. The Contractor shall organize this list of Subcontractors in the same sequence as the Index of Specification Sheets, and state the Work category followed by the name of the Subcontractor and/or

fabricator (or “Contractor” where the portion of the Work is by the Contractor’s own forces), including the address, telephone number, individual name of the project contact, and his or her email address. The list shall be accompanied by evidence of any qualifications required within the technical sections of the Project Manual and satisfactory to the Architect and Owner. The list shall be updated promptly as part of the payment process if additional Subcontractors of any tier are engaged. No action or inaction of the Owner or Architect in response to receipt of the names of the proposed Subcontractors of any tier shall constitute approval of any Subcontractor of any tier or of its performance. The Architect may reply promptly to the Contractor in writing stating whether or not the Owner or the Architect (1) has, after due investigation, reasonable objection to any such proposed person or entity or (2) requires additional time for review. “Reasonable objection” shall include without limitation lack of “responsibility” of the proposed Subcontractor, as defined in RCW 39.04.350 or lack of qualification as required within the technical sections of the Project Manual, or as otherwise described in Section 5.2.3. Failure of the Architect to reply promptly shall constitute notice of no reasonable objection. If the Owner makes a reasonable objection, the Contractor shall replace the Subcontractor with no increase to the GMP or Contract Time. Such a replacement shall not relieve the Contractor of its responsibility for the performance of the Work and compliance with all of the requirements of the Contract within the GMP and Contract Time.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made a timely and reasonable objection as not “responsible.”

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor or a Subcontractor as not “responsible,” the Contractor or Subcontractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was qualified, “responsible,” and reasonably capable of performing the Work, the GMP and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued. However, no increase in the GMP or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting qualified names as required, and no increase in the GMP or Contract Time shall be allowed for such change (1) if the Owner reasonably concludes that a proposed Subcontractor of any tier has materially failed to perform satisfactorily (such as causing a material delay) on one or more projects for the Owner within three years of the bidding date or is otherwise not “responsible” as defined in the Contract Documents, the bidding documents, and RCW 39.04.350; (2) if the proposed Subcontractor is not qualified as required within the technical sections of the Project Manual; or (3) if the proposed lower-tier Subcontractor is different from the entity listed with the first-tier Subcontractor’s Bid. Such a replacement shall not relieve the Contractor of its responsibility for the performance of the Work or compliance with all of the requirements of the Contract within the GMP and Contract Time.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution. If the Owner reasonably concludes that any portion of the Work subcontracted by the Contractor is not being performed in accordance with the Contract Documents, the Contractor shall, upon request of the Owner, remove the Subcontractor performing such work. This removal shall not relieve the Contractor of its responsibility for the performance of the Work or complying with all of the requirements of the Contract within the GMP and Contract Time, nor shall the Owner be obligated to so request.

§ 5.2.5 The Contractor shall verify responsibility criteria for each first-tier Subcontractor. A Subcontractor of any tier that engages other Subcontractors must verify responsibility criteria for each of its lower-tier Subcontractors. Verification shall include that each Subcontractor of any tier, at the time of subcontract execution, meets the responsibility criteria listed in the bidding documents for the bid package.

§ 5.3 Subcontractual Relations

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor’s Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into

similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. The Contractor shall provide to the Owner copies of the written agreements between the Contractor and any Subcontractor, and a Subcontractor and any sub-tier Subcontractor, upon request.

§ 5.3.2 The Contractor shall schedule, supervise and coordinate the operations of all Subcontractors of any tier, including any suppliers of early procurement items and any assigned Subcontractors. No subcontracting of any of the Work shall relieve the Contractor from its responsibility for the performance of the Work in accordance with the Contract Documents or from its responsibility for the performance of any other of its obligations under the Contract Documents. The Contractor is responsible for the timely, accurate and appropriate Subcontractor coordination of the Work of lower tier Subcontractors in accordance with the overall Work, including communications, meetings, drawings, illustrations, and other necessary associated activities required for the successful coordination of all trades, schedules, materials and workmanship. The Owner shall provide to the Contractor copies of any written Owner-Supplier agreements to any early procurement contracts, to the extent that such agreements are identified in the Specifications.

§ 5.3.3 The Contractor agrees to diligently, and using its best efforts, cause each Subcontractor of any tier to correct, at that Subcontractor's own expense, all Work performed by the Subcontractor of any tier that is defective in material or workmanship or otherwise fails to conform to the Contract Documents, including all necessary removal, replacement and/or repair of any other portion of the Project which may be damaged in removing, replacing or repairing any portion of the Project. If any Subcontractor of any tier defaults in its obligations to promptly correct any such deficiency, the Contractor shall be responsible for correcting the deficiency.

§ 5.3.4 The Contractor shall provide, and shall cause its Subcontractors of any tier to provide, all required notices and comply with all applicable health and safety laws, rules, regulations, codes and lawful orders of public authorities and of quasi-governmental authorities relating to the Work, including without limitation all OSHA and WISHA requirements, and the Contractor shall, and shall cause applicable Subcontractors of any tier to, indemnify, defend and hold harmless the Owner from and against any and all claims, liabilities, fines and attorneys' fees arising from any failure of the Contractor or a Subcontractor of any tier to have complied with any such requirements in any respect.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner pursuant to Section 14.2 or 14.4 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract, but only for events and payment obligations that arise after the date of the assignment.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than sixty (60) days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

§ 5.5 Subcontractor Responsibility

§ 5.5.1 The Contractor shall include the language of this Section 5.5 in each of its first tier subcontracts, and shall require each of its Subcontractors to include the same language of this Section 5.5 in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. Upon request of the Owner, the Contractor shall promptly provide documentation to the Owner demonstrating that each Subcontractor meets the Subcontractor

responsibility criteria in Section 5.5.2 below. The requirements of this Section apply to all Subcontractors regardless of tier.

§ 5.5.2 At the time of subcontract execution, the Contractor shall verify that each of its first tier Subcontractors meets the following bidder 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 state unified business identifier (UBI) number;
- .3 Have received training on requirements related to public works and prevailing wage as required by RCW 39.04.350;
- .4 Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through civil judgement entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of Chapter 49.46, 49.48 or 49.52 RCW.
- .5 Not have been out of compliance by the Washington State apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year immediately preceding the date of the bid solicitation;
- .6 If applicable, have:
 - (a) industrial insurance (workers' compensation) coverage for the Subcontractor's employees working in Washington, as required by Title 51 RCW;
 - (b) a Washington Employment Security Department number, as required by Title 50 RCW;
 - (c) a Washington Department of Revenue state excise tax registration number, as required by Title 82 RCW;
 - (d) an electrical contractor license, if required by Chapter 19.28 RCW;
 - (e) an elevator contractor license, if required by Chapter 70.87 RCW; and
 - (f) a plumbing contractor license in compliance with chapter 18.106 RCW.
- .7 Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).

§ 5.6 Liens

§ 5.6.1 The Contractor shall promptly pay (and secure the discharge of any liens asserted by) all persons properly furnishing labor, equipment, materials or other items in connection with the performance of the Work (including, but not limited to, any Subcontractors of any tier) to the extent that the Owner has paid the Contractor for such. The Contractor shall furnish to the Owner such releases of liens and Claims and other documents monthly with its payment application to evidence such payment (and discharge). The Owner may, at its option, withhold payment, in whole or in part, to the Contractor until such documents are furnished. The Contractor may provide other security acceptable to the Owner, such as a bond, in lieu of paying disputed liens or Claims.

§ 5.6.2 The Contractor shall defend, indemnify, and hold harmless the Owner from any liens, including all expenses and the Architect's and attorneys' fees, except to the extent a lien has been filed because of the failure of the Owner to make a contractually required payment.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15, except that the Contractor shall have no Claim for such construction or operations to the extent disclosed in the Bidding Documents or Contract Documents or known to the Contractor prior to execution of the GMP Amendment. The Contractor is also responsible to coordinate its Work with any other entities performing work on or adjacent to the site, such as work in the right of way and work by utility companies, and the Contractor shall incorporate such work into the Construction Schedule.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term “Contractor” in the Contract Documents in each case shall mean the Contractor who executes each separate agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner’s own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the Construction Schedule deemed necessary after a joint review and mutual agreement with the Owner. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner’s own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor’s construction and operations with theirs as required by the Contract Documents. If the Contractor receives items from a separate contractor or from the Owner for storage, erection or installation, the Contractor shall acknowledge receipt for items delivered, and thereafter will be held responsible for the care, storage and any necessary replacement of items received.

§ 6.2.2 If part of the Contractor’s Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect and the Owner of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor’s Work. Failure of the Contractor to notify the Architect or Owner of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner’s or Separate Contractor’s completed or partially completed construction is fit and proper to receive the Contractor’s Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not reasonably discoverable or apparent.

§ 6.2.3 The Contractor shall reimburse and indemnify the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor’s delays, improperly timed activities or defective construction. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15, except that the Contractor shall have no Claim for such construction or operations to the extent disclosed in the Bidding Documents or Contract Documents or known to the Contractor prior to execution of the Contract. The Contractor is also responsible to coordinate its Work with any other entities performing work on or adjacent to the site, such as work in the right of way and work by utility companies, and the Contractor shall incorporate such work into its construction schedule.

§ 6.2.4 The Contractor shall promptly remedy damage caused by the Contractor to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.2.6 Should the Contractor or any of its Subcontractors of any tier cause damage of any kind, including but not limited to delay, to any other contractor or Subcontractor on the Project, the Contractor shall, upon due notice, promptly attempt to settle with such other contractor or Subcontractor by agreement or otherwise to resolve the dispute.

§ 6.3 Owner’s Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and allocate the cost among those responsible plus a ten percent (10%) markup on such costs.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, solely by Change Order (CO), Construction Change Directive (CCD) or order for a minor change in the Work, subject to the limitations and qualifications stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Owner or Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.1.4 A "minor change in the Work" referenced above is a change which has no direct or indirect effect upon the GMP or Contract Time and includes, but is not limited to, a supplemental instruction or ASI.

§ 7.1.5 The Owner may request the Contractor to propose the amount of change in the GMP, if any, and the extent of change in the Contract Time, if any, arising from the proposed change in the Work. The Contractor shall submit its responsive proposal as soon as possible and within ten (10) business days, and shall in good faith specify the components and amount by which the GMP and/or Contract Time would change. Labor, materials and equipment shall be limited to and itemized in the manner described in Sections 7.1 through 7.7 of the Agreement for the Contractor and Section 7.5 of these General Conditions for Subcontractors of any tier. If the Contractor fails to respond within this time, the Owner may withhold some or all of a progress payment otherwise due until the tardy proposal is received. If the Owner explicitly accepts the proposal in writing, the Owner and the Contractor will be immediately bound to the terms of the proposal, the change will be included promptly in a future Change Order, and the change in the Work described in the proposal shall commence expeditiously. The Owner may reject the proposal, in which case the Owner may either not effectuate the change in the Work or may order the change through a Construction Change Directive or supplemental instruction or an order for a minor change in the Work. The Architect and the Owner may confer directly with Subcontractors of any tier concerning any item proposed to the Owner under this Article. The Contractor may submit a Change Order Proposal to Owner to propose the amount of change in the GMP, if any, and the extent of change in the Contract Time, if any, arising from the proposed change in the Work. The Owner shall, within thirty (30) days of its receipt of Contractor's Change Order Proposal, accept, dispute, or reject the Proposal. If the Proposal is disputed or rejected, the Owner shall state in writing why part or all of the request is disputed or rejected. If the Owner does not respond in writing to a Change Order Proposal within thirty (30) days, the Contractor shall not be deemed to have waived any right to the claims process in Section 15.

§ 7.1.6 If the Contractor adds a reservation of rights that has not been initialed by the Owner to any Change Order, Construction Change Directive, Change Order Proposal, Application for Payment or any other document, all amounts therein shall be considered disputed and not due or payable unless and until costs are re-negotiated or the reservation is withdrawn or changed in a manner satisfactory to and, in all cases, initialed by the Owner. If the Owner makes payment for a Change Order or an Application for Payment that contains a reservation of rights not initialed by the Owner to indicate agreement with the reservation, and if the Contractor negotiates the check for such payment, then the reservation or rights shall be deemed waived, withdrawn and of no effect.

§ 7.2 Change Orders

A Change Order is a written instrument prepared by the Architect, with assistance from the Owner, and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Contract Documents, including any change in the Work;
- .2 The amount of the adjustment, if any, in the GMP; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and the Owner and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the GMP or

Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the GMP and Contract Time being adjusted accordingly. The Owner's use of a Construction Change Directive does not constitute agreement that the directive constitutes a change in the Work, the GMP, or the Contract Time. For any change in the Work, whether initiated by a Construction Change Directive or a Change Order Proposal, the Contractor must submit its proposed price and any proposed extension of the Contract Time to the Owner within ten (10) days of the date of the Construction Change Directive or Change Order Proposal. If the Contractor fails to submit a proposed price and time within this time period, the Owner may establish what it believes to be the fair price of the changed work, and any additional Contract Time, and this price and time submitted by the Owner shall be final and binding upon the parties, as if they had signed a Change Order in this amount, without recourse to submitting any claims or litigation. Payment for any Changes to the Work shall not exceed the labor and equipment indicated on the daily work logs.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the GMP, the adjustment shall be based on one of the following methods or as mutually agreed by the Owner and the Contractor:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be proposed by the Owner and determined in a manner agreed upon by the parties (accompanied by the Contractor's itemized estimate of probable cost) and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees pursuant to Section 7.3.5, or if cost is to be determined under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with supporting data. In order to facilitate checking of such quotations, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by complete itemization of costs including labor, equipment, materials, and subcontract costs. Labor, equipment, and materials shall be itemized in the manner described in Section 7.5. When major cost items arise from Subcontractors or Suppliers of any tier, these items shall also be itemized, using the approved Change Proposal detail provided to the Contractor by the Owner. Approval may not be given without such itemization. Failure to provide data within fourteen (14) days of the Owner's issuance of a Constructive Change Directive shall constitute waiver of any Claim for changes in the GMP or Contract Time. Furthermore, the Owner shall have the right to audit the books, records and contracts of the Contractor and of any Subcontractor or Supplier of any tier seeking a change in the GMP. The total cost of any change, including a Claim under Article 15 shall be limited to the reasonable value, as determined by the Owner, assisted by the Architect (subject to appeal through the dispute resolution procedure of Section 15.3), of the items in Section 7.5. Unless otherwise agreed in writing by the Owner, the cost shall not exceed the lower of the prevailing cost for the work in the locality of the Project or the cost of the work in the current edition of R.S. Means Company, Inc., Building Construction Cost Data.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved. As soon as possible, and within seven (7) days of receipt, the Contractor shall advise the Architect and Owner in writing of the Contractor's agreement or disagreement with the proposed adjustment or the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the GMP or Contract Time. The Contractor's response shall reasonably specify the reasons for its disagreement and the adjustment or other terms that it proposes. Without such timely written response, the Contractor shall conclusively be deemed to have accepted the Owner's adjustment. The Contractor's disagreement shall not relieve the Contractor of its obligation to comply promptly with any written notice issued by the Owner or the Architect. The adjustment shall then be determined by the Architect in accordance with the provisions of the Contract Documents. The ultimate adjustment shall not exceed the larger amount submitted.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in the GMP and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be incorporated into a Change Order.

§ 7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the GMP shall be the largest of (i) the reasonable and prevailing value of the deletion or change, (ii) the line item value in the Schedule of Values, or (iii) the actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, and provided that any reservations of rights regarding the Construction Change Directive have been initialed by the Owner, amounts not in dispute for such changes in the Work may be included in Applications for Payment, accompanied by a Change Order indicating the parties' agreement with part or all of such costs.

§ 7.3.9 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the GMP and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner, with the Architect's assistance, will include the change in the next available Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.10 The Owner's final determination, in consultation with the Architect, concerning the adjustments in the GMP and/or Contract Time resulting from a Construction Change Directive constitute an "Event" for the purposes of submitting a Claim under Section 15.2.

§ 7.3.11 If the Contractor disagrees with the adjustment in the GMP or Contract Time, the Contractor must make a Claim in accordance with applicable provisions of Article 15 or such claim will be waived.

§ 7.4 Minor Changes in the Work

The Architect and the Owner have authority to order minor changes in the Work (sometimes called a Design Clarification or Architect's Supplemental Instruction or ASI) not involving adjustments in the GMP or the Contract Time and not inconsistent with the intent of the Contract Documents and do not involve an adjustment in the GMP or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the GMP or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the GMP or Contract Time, the Contractor waives any adjustment to the GMP or extension of the Contract Time.

§ 7.5 Pricing Components

For the Contractor, the value of any changed Work or of any Claim for an increase or decrease in the GMP shall be limited to the Cost of the Work and Fee defined in the Agreement. For Subcontractors of any tier, the total cost of any Change in the Work or of any other increase or decrease in the GMP, including a Claim, shall be limited to the following components:

§ 7.5.1 Direct Labor Costs: These are the labor costs determined by the number of additional craft hours and the hourly costs necessary to perform the Change in the Work. The hourly cost shall be based upon the following:

- .1 Basic wages and fringe benefits:** The hourly wage (without markup or labor burden) and fringe benefits paid by the Subcontractor as established by the Washington Department of Labor and Industries or contributed to labor trust funds as itemized fringe benefits, whichever is applicable, not to exceed that specified in the applicable "Intent to Pay Prevailing Wage" for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the Change in the Work on the site. The premium portion of overtime wages is not included unless pre-approved in writing by the Owner. Costs paid or incurred by the Subcontractor for vacations, per diem, subsistence, housing, travel, bonuses, stock options, or discretionary payments to employees are not separately reimbursable. The Contractor shall provide copies of certified payrolls for itself and Subcontractors of any tier upon the Owner's request.
- .2 Workers' insurances:** Direct contributions to the State of Washington as industrial insurance, medical aid, and supplemental pension by class and rates established by the Washington Department of Labor and Industries.

- .3 Federal insurances: Direct contributions required by the Federal Insurance Compensation Act (FICA); Federal Unemployment Tax Act (FUTA); and State Unemployment Compensation Act (SUCA).
- .4 Safety costs not to exceed two percent (2%) of the sum of amounts in .1, .2 and .3 above.

Upon the Owner's request, the Contractor shall substantiate all claimed wage rates and shall provide a breakdown of the various components of the labor costs in a form provided or approved by the Owner.

§ 7.5.2 Direct Material Costs: This is an itemization, including material invoice, of the quantity and cost of additional materials reasonable and necessary to perform the Change in the Work. The unit cost shall be based upon the net cost after all discounts or rebates, freight costs, express charges, or special delivery costs, when applicable. No lump sum costs will be allowed except when approved in advance by the Owner. If the Contractor is offered discounts and/or rebates based upon prompt payment, the Contractor shall offer the Owner the opportunity to take advantage of such discount and/or rebate, and if the Owner makes such a prompt payment then the Owner shall only be charged the price as reduced by the discount and/or rebate. If the Owner declines the opportunity the contractor may keep any such discounts and/or rebates it achieves through its own prompt payment. If the Contractor does not provide the Owner the opportunity to participate then the Contractor may only charge the net costs after consideration of discounts and rebates.

§ 7.5.3 Construction Equipment Usage Costs: This is an itemization of the actual length of time that construction equipment appropriate for the Work will be used solely on the Change in the Work at the site times the applicable rental cost as established by the lower of the local prevailing rate published in The Rental Rate Blue Book by Data Quest, San Jose, California, as modified by the AGC/WSDOT agreement or the actual, reasonable rate paid to unrelated third parties as evidenced by rental receipts. Rates and quantities of equipment rented that exceed the local fair market rental costs shall be subject to the Owner's prior approval. Total rental charges for equipment or tools shall not exceed 75% of the fair market purchase value of the equipment or the tool. Actual, reasonable mobilization costs are permitted if the equipment is brought to the site solely for the Change in the Work. If more than one rate is applicable, the best available rate will be utilized. The rates in effect at the time of the performance of the changed Work are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance to the same extent as the comparable Blue Book or fair market rate. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost. When rental rates payable do not include fuel, lubrication, maintenance, and servicing, as defined as operating costs in the Blue Book, such operating costs shall be reimbursed based on actual costs. The rate for equipment necessarily standing by for future use on the changed work shall be no more than 50% of the rate established above. If equipment is required for which a rental rate is not established by Blue Book, an agreed rental rate shall be established for that equipment, which rate and use must be approved by the Owner prior to performing the Work.

§ 7.5.4 Cost of Change in Insurance or Bond Premium: This is defined as:

- .1 Subcontractors' liability insurance: The actual cost (expressed as a percentage submitted with the certificate of insurance provided under Section 11.1.3, and subject to audit) of any change in the Subcontractor's liability insurance arising directly from the changed Work; and
- .2 Public works bond: The actual cost (expressed as a percentage submitted with evidence of bondability under Section 11.5, and subject to audit) of the change in the Subcontractor's premium for the Subcontractor's statutorily required performance and payment bond arising directly from the changed Work.

Upon request, the Subcontractor shall provide the Owner with supporting documentation from its insurer or surety of any associated cost incurred. The Contractor is not entitled to any increased premium for insurance or bonds as those costs are included within the Contractor's Fees. The Contractor is not entitled to any increased premium on any retainage bond as such bonds are optional.

§ 7.5.5 Lower-Tier Subcontractor Costs: These are payments the Subcontractor makes to lower-tier Subcontractors for changed Work performed by such Subcontractors. The lower-tier Subcontractors' cost of changed Work shall be determined in the same manner as prescribed in this Section 7.5.

§ 7.5.6 Subcontractor's Fee: This is the allowance for all combined overhead, profit and other costs, including all office, home office and site overhead (including facilities, purchasing, clerical, project manager, project engineer, other engineers, project foreman, estimator, superintendent and their vehicles and clerical assistants), taxes (except for sales tax), employee per diem, subsistence and travel costs, warranty, safety costs, printing and copying, quality control/assurance, purchasing, small or hand tool (a tool that costs \$500 or less and is normally furnished by the performing contractor) or expendable charges, preparation of as-built drawings, impact on unchanged Work, Change Order and Claim preparation, and delay and impact costs of any kind (cumulative, ripple, or otherwise). No such costs may be added to the total cost to the Owner of any Change Order, Construction Change Directive, Claim or any other claim of any kind on this Project. No fee shall be due, however, for direct settlements after Substantial Completion by the Owner of Subcontractor Claims. The Fee shall be limited in all cases to the following schedule:

- .1 A Subcontractor of any tier shall receive 10% of the cost of any materials supplied or work properly performed by that Subcontractor's own forces.
- .2 A Subcontractor of any tier shall receive 7% of the amount owed (less fee) directly to a lower-tier Subcontractor or supplier for materials supplied or for work properly performed by that Subcontractor or supplier.
- .3 The cost to which this Fee is to be applied shall be determined in accordance with Section 7.5.1 through 7.5.4.

If a Change in the Work involves both additive and deductive items, the appropriate Fee allowed will be added to the net difference of the items. If the net difference is negative, no Fee will be added to the negative figure as a further deduction. If the changed Work is performed by a wholly-owned subsidiary or by a company with common ownership interests (i.e., at least 50% similar ownership) of the Contractor or any Subcontractor, then only the entity performing the changed Work may receive a Fee per the above schedule and the higher-tier company shall not be entitled to any Fee. The parties acknowledge that the Fees listed in this Section 7.5.6 are substantially greater than the fees and overhead normally included in determining the GMP bid and Subcontractor bid prices; that these higher percentages are a sufficient amount to compensate the Subcontractors for all effects and impacts of Changes in the Work; and that the resultant overcompensation of the Subcontractors for some Changes compensates the subcontractors for any Changes for which the Contractor or Subcontractors believe the percentage is otherwise insufficient.

§ 7.5.7 The cost of any changed Work or of any other increase or decrease in the GMP, including a Claim, shall not include, among other things, consultant costs, attorneys' fees, or Claim preparation expenses. Such costs are not recoverable from the Owner.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established by the Owner in its conditional notice to proceed issued for each phase of the Work. Work on the site may begin for a phase when the Contractor complies with the requirements of the notice to proceed. The date of commencement of all the Work is the date established by the Owner in its first conditional notice to proceed issued for a phase of the Work.

§ 8.1.3 The date of Substantial Completion of the Work (or a designated portion thereof) is the date certified by the Architect and set by the Owner in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.1.5 "Conditional Notice to Proceed" is the written notice issued by the Owner identifying the date of commencement of the Work and identifying conditions to be satisfied before Work on site may commence.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence the Work prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time and shall achieve Final Completion within sixty (60) days thereafter (or such other period of time for specific phases as is specified in the Contract Documents).

§ 8.2.4 Liquidated Damages. THE TIMELY COMPLETION OF THIS PROJECT IS ESSENTIAL TO THE OWNER. The Owner will incur serious and substantial damage if Substantial Completion of the Work or a designated portion thereof does not occur within the Contract Time; however, it would be difficult, if not impossible, to determine the amount of such damages, which could include, for example, personnel and overtime costs, transportation costs, governmental fees, storage costs, loss of use, and lost opportunities. Consequently, the Owner may include a reasonable estimate of loss in the Contract Documents ("Liquidated Damages") that will be assessed for failure to complete the Project within the Contract Time. The Owner's right to Liquidated Damages is not affected by partial completion, occupancy, or beneficial occupancy. The Contractor shall furnish sufficient forces, construction plant and equipment, and shall work such hours, including night shifts, overtime operations and weekend and holiday work as may be necessary to insure the completion of the Work or designated portions thereof in accordance with the date of Substantial Completion and the accepted Construction Schedule. If the Contractor fails to perform in a timely manner in accordance with the Contract Documents and, through the fault of the Contractor or Subcontractor(s) of any tier fails to meet the Construction Schedule, the Contractor shall take such steps as may be necessary to immediately improve its progress by increasing the number of workers, shifts, overtime operations or days of work (to the extent allowable under the Noise Ordinance of Vancouver's Municipal Codes, VMC 20.935.030 and VMC 7.05) or other means and methods, all without additional cost to the Owner.

§ 8.2.5 If the Work is to be performed in phases, with separate dates set forth for Substantial Completion elsewhere in the Contract Documents, then the specified Liquidated Damages shall apply separately to each such phase unless otherwise specified.

§ 8.2.6 Any provisions in the Contract for Liquidated Damages are intended to be in lieu of the liability of the Contractor for delay damages sustained by the Owner but shall not relieve or release the Contractor from liability for any and all other damages suffered by the Owner due to other breaches of the Contract or suffered by separate contractors.

§ 8.2.7 It is the Contractor's option, but not its right, to attempt to complete the Project earlier than the dates specified in the Contract Documents. Thus, any Claim based upon delay shall be evaluated based upon the dates specified in the Contract Documents, not an earlier projected completion that the Contractor may propose.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work only to the extent reflected in approved Change Orders providing for specific extensions of the Contract Time; (3) by unanticipated, abnormal weather (see Section 15.1.3); (4) by unexpected industry-wide labor disputes, fire, seismic event, unusual delay in deliveries, governmental delays (including unanticipated permit delays not caused by the Contractor; delays caused by a local jurisdiction's scheduled days off shall not be considered an excusable delay), unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.4, or other causes beyond the Contractor's control; (5) by delay authorized by the Owner pending mediation and binding dispute resolution; or (6) by other causes that the Contractor asserts, and the Architect determines, may justify delay, then the Contract Time shall be extended for such reasonable time as the Owner and Architect may determine, limited to the change in the actual critical path of the Construction Schedule directly caused thereby, as the Owner may determine consistent with the provisions of the Contract Documents. In no event, however, shall the Contractor be entitled to any extension of time absent proof of (1) delay to an activity on the critical path of the Construction Schedule, so as to actually delay the Project completion beyond the date of Substantial Completion, or (2) delay transforming an activity into the critical path of the Construction Schedule, so as to actually delay the Project completion beyond the date of Substantial Completion.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15 and shall include any proposed changes in the Contractor's Construction Schedule or the Contract Time, a description of any

event that could delay performance or supplying of any item of the Work, the expected duration of the delay, the anticipated effect of the delay on the Contractor's Construction Schedule, and the action being taken to correct the delay situation. That the Owner or the Architect may be aware of the occurrence or existence of a delay through means other than the Contractor's written notification shall not constitute a waiver of a timely or written notice or Claim. The Contractor has an obligation to minimize and mitigate schedule impacts.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

- .1** If the delay was not caused by the Owner, the Contractor, a Subcontractor of any tier, or the Architect, or anyone acting on behalf of any of them, the Contractor is entitled only to an increase in the Contract Time in accordance with the Contract Documents but not an increase in the GMP. If the delay was caused by the Contractor, a Subcontractor of any tier, or anyone acting on behalf of any of them, the Contractor is not entitled to an increase in the Contract Time or in the GMP. The Contractor shall be entitled to a change in the GMP only if the delay was caused by the Owner or the Architect, or anyone acting on behalf of them. The Contractor shall not recover damages, an equitable adjustment or an increase in the GMP or Contract Time from the Owner where the Contractor could have reasonably avoided the delay by the exercise of due diligence. The Contractor shall be able to recover an increase in the GMP, provided it is consistent with the terms of the Contract Documents, only if the delay was in the critical path, could not have reasonably been avoided, was unreasonable and was caused by the Owner or anyone acting on its behalf as permitted under the Contract Documents. The Owner is not obligated directly or indirectly for damages, an equitable adjustment, or an increase in the GMP for any delay suffered by a Subcontractor of any tier that does not increase the Contract Time.
- .2** In the event the Contractor (including any Subcontractors of any tier) is held to be entitled to damages from the Owner for delay beyond the payment permitted in Section 7.5.6, it is agreed that the total combined damages to the Contractor and any Subcontractors of any tier for each day of delay shall be limited to the original Specified General Conditions divided by the number of days of Contract Time. By submitting its proposal and by signing the Contract, the Contractor represents that it would be difficult, if not impossible, to determine the amount of any delay damages due it, that it has taken this provision for liquidated damages into consideration in its bid, and that these liquidated damages are a reasonable estimate of its loss. No damages will be allowed for any time prior to ten (10) days before receipt of written notice of the Claim of the delay pursuant to Article 15.
- .3** The Contractor shall not in any event be entitled to damages arising out of actual or alleged loss of efficiency; morale, fatigue, attitude, or labor rhythm; constructive acceleration; home office overhead; expectant underrun; trade stacking; reassignment of workers; rescheduling of work, schedule compression; concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy; logistics; ripple; season change; extended or expanded overhead or general conditions; profit upon damages for delay; impact damages; cumulative impacts; or similar damages. Any effect that such alleged costs may have upon the Contractor or its Subcontractors of any tier is fully compensated through the percentage Fee on Change Orders paid through Section 7.5.6 and any liquidated damages paid hereunder.
- .4** The Contractor shall not be entitled to any adjustment in the Contract Time or the GMP, or to any additional payment of any sort, by reason of the loss or the use of any float time, including time not on the critical path or time between the Contractor's anticipated completion date and the end of the Contract Time, whether or not the float time is described as such on the Construction Schedule.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contract Sum consists of the Cost of the Work (including Negotiated Support Services and Specified General Conditions), and the Contractor's Fee. The Contract Sum shall not exceed the GMP.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial

inequity to the Owner or Contractor, the applicable unit prices, but not the Contract Time or any other portion of the GMP, shall be equitably adjusted.

§ 9.2 Schedule of Values

At least fourteen (14) days before the first Application for Payment, the Contractor shall submit a schedule of values ("Schedule of Values") to the Architect and Owner, consistent with the Contract Documents, allocating the entire GMP to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. At a minimum, the Schedule of Values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Owner or Architect. At a minimum, the Work shall be itemized by Specification section or system, separate values for labor, materials and equipment shall be provided, and line items on the Schedule of Values shall be tied to the Construction Schedule. Quantities shall be provided for each section or system of the Work. The Contractor shall itemize and prepare the Schedule of Values for approval by the Owner with respect to form, content, and level of detail. This schedule, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the Schedule of Values shall be submitted to the Owner and Architect and supported by such data to substantiate its accuracy as the Owner or Architect may require, and unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

- .1** Mobilization shall be a maximum of one-half of one percent (0.5%) of the GMP, and shall be paid only if supported by an itemized breakdown of costs acceptable to the Owner.
- .2** Payment applicable to the expenses of Contractor's bond and/or builder's risk insurance (to the extent Contractor is required to procure such insurance) will be made only upon receipt of paid invoices from surety and/or insurance carrier.
- .3** No payment will be made for Shop Drawings or submittals until on-site receipt of materials, except for structural steel, fire sprinkler, automatic temperature control, elevator, transformers, switchgear, ground source heat exchange system, and fire alarm shop drawings that have been reviewed and accepted by the Architect.
- .4** The Schedule of Values shall allocate at least one percent (1%) of the GMP to Commissioning of Operational Systems, as defined in the Contract Documents.
- .5** The Schedule of Values shall allocate at least one percent (1%) of the GMP for completion of punch list items for the Contractor and all Subcontractors.
- .6** The Schedule of Values shall allocate at least one half percent (.5%) of the GMP for completion of approved operations and maintenance data and the delivery of warranties for the Contractor and all Subcontractors.
- .7** The Schedule of Values shall allocate at least one half percent (.5%) of the GMP for completion of record drawings, delivery of extra stock, and all other documentation or items of the Work required for Final Completion of the entire Project for the Contractor and all Subcontractors.
- .8** The Schedule of Values shall allocate at least two percent (2.0%) of the Specified General Conditions for preparation and submittal of the Construction Schedule plus another at least two percent (2.0%) of the Specified General Conditions for preparation and submittal of the monthly schedule updates.

Any changes to the Schedule of Values shall be submitted to the Architect and Owner and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 Progress payments will be made monthly for work duly certified, approved, and performed during the calendar month preceding the application. These amounts are paid in trust to the Contractor for distribution to Subcontractors to the extent and in accordance with the approved Application for Payment.

§ 9.3.1.1 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay. A payment request shall not be valid unless it complies with the requirements of the Contract Documents.

§ 9.3.1.2 Payments to Subcontractors. No payment request shall include amounts the Contractor does not intend to pay to a Subcontractor because of a dispute or other reason. If, after making a request for payment but before paying a Subcontractor for its performance covered by the payment request, the Contractor discovers that part or all of the payment otherwise due to the Subcontractor is subject to withholding from the subcontractor under the subcontract (such as for unsatisfactory performance or non-payment of sub-subcontractors), the Contractor may withhold the amount as allowed under the subcontract, but it shall give the Subcontractor, the Owner and the Architect written notice of the remedial actions that must be taken as soon as practicable after determining the cause for the withholding but before the due date for the Subcontractor payment, and pay the Subcontractor within eight (8) working days after the Subcontractor satisfactorily completes the remedial action identified in the notice.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of project specific materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in writing and in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment (except that title to demolition removed from the site shall not pass to the Owner). The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.3.4 Retainage

§ 9.3.4.1 In accordance with RCW 60.28, a sum equal to five percent (5%) of each approved Application for Payment shall be retained. After award of a Contract for public improvements, or work for which retained percentages are required to be reserved under the provision of RCW 60.28, the Owner shall require the Contractor to exercise, in writing, one of the options listed below:

- .1 Retained percentages will be retained in a fund by the Owner not subject to release until sixty (60) days following the Final Acceptance of the Work as completed and as provided in Section 9.10.4; or
- .2 Deposited by the Owner in an interest-bearing account in a bank, mutual savings bank or savings and loan association and not subject to release until sixty (60) days following Final Acceptance of the Work as completed and as provided in Section 9.10.4; or
- .3 Placed in escrow with a bank or trust company and not subject to release until sixty (60) days following the Final Acceptance of the Work as completed and as provided in Section 9.10.4.
- .4 If the Contract provides a bond in place of retainage, it shall be in an amount equal to 5% of the GMP plus change orders. The minimum requirements for the bond are that it must be on a form acceptable to the Owner, with an A.M. Best rating of A- or better and a financial rating of no less than VII, and signed by a surety registered by the Washington State Insurance Commissioner and on the currently authorized insurance list published by the Washington State Insurance Commissioner; additional requirements as established by the Owner may be applied.

§ 9.3.4.2 The Contractor or a Subcontractor may withhold payment of not more than five percent (5%) as retainage from the monies earned by any Subcontractor or Sub-subcontractor, pursuant to RCW 60.28, provided that the Contractor pays interest to the Subcontractor at the same interest rate it receives from its reserved funds. If requested by the Owner, the Contractor shall specify the amount of retainage and interest due a Subcontractor.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's approved Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment,

and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial and Final Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the GMP.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Owner may, with or without the Architect's concurrence, withhold payment, and the Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence or subsequent observations, it may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the GMP;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 unsatisfactory prosecution of the Work by the Contractor, including but not limited to failure to carry out the Work in accordance with the Contract Documents;
- .8 delay by the Contractor and/or its Subcontractor(s) of any tier, or failure to comply with the Construction Schedule requirements;
- .9 failure to submit affidavits pertaining to wages paid as required by statute;
- .10 failure to submit a properly updated Construction Schedule;
- .11 failure to comply with a requirement of the Contract Documents in which the Owner has reserved the right to withhold payment;
- .12 liquidated damages;
- .13 failure to properly maintain as-builts;
- .14 failure to properly submit daily construction records;
- .15 failure to properly submit certified payrolls; or
- .16 failure to properly submit any other documents required of the Contractor under the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 No payment shall be made to the Contractor, however, until the Contractor and all subcontractors who have performed work shall have filed and received approval of a Statement of Intent to Pay Prevailing Wage as required by RCW 39.12.040 from the Washington State Department of Labor and Industries. Said Contractor and all subcontractors shall also keep accurate payroll records for three years from the date of acceptance as described in RCW 39.12.120. A Contractor and all subcontractors shall, file a copy of its certified payroll records using the Department of Labor and Industries online system on a monthly basis. A Contractor's noncompliance with this section shall constitute a violation of RCW 39.12.050.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, and it has been approved by the Owner, the Owner shall make payment in the manner and within the time provided in the Contract Documents. So long as final, approved Applications for Payment are received prior to the tenth day of the month, the Owner will make a progress payment within thirty (30) days of an approved, fully itemized and fully executed Application for Payment that complies with all contractual requirements. The Owner shall be entitled to withhold payment to the extent provided by the Contract Documents, notwithstanding the issuance of a Certificate for Payment.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than ten (10) days after receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. If the Contractor does not receive payment for any cause which is not the fault of a particular Subcontractor but does receive payment for materials supplied or work performed by that Subcontractor, the Contractor shall pay that Subcontractor in accordance with its subcontract for its satisfactorily completed work, less the retained percentage

.1 The Contractor shall comply with all requirements regarding prompt payment including, but not limited to, the requirements of RCW 39.04.250, 39.76.011, 39.76.020, and 39.76.040.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor, satisfactory to the Owner, that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work and the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work.

§ 9.6.7 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect improperly fails to issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's timely, complete and approved Application for Payment under Section 9.3.1.2 (subject to the approved payment schedule), or if the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents, the amount due and owing to the Contractor, then the Contractor may, upon seven (7) additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. This right to stop Work does not apply in the case of the failure to issue a Certificate of

Payment for amounts in dispute. The Contract Time shall be extended appropriately and the GMP shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, as provided for in A133 and Section 7.5 of these General Conditions.

§ 9.8 Substantial Completion and Occupancy

§ 9.8.1.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof designated and approved by the Owner and AHJ(s) is sufficiently complete in accordance with the Contract Documents so that the Owner can fully occupy or utilize the Work, or the designated portion thereof, for its intended use, including FF&E and staff occupancy. The fact that the Owner may occupy the Work or a designated portion thereof does not indicate that the Work is acceptable in whole or in part. All Work other than incidental corrective or punch list work and final cleaning shall be completed, including but not limited to the following:

- .1 Obtain applicable occupancy permits, including fire/life safety systems and health department approval, pressure vessel permits, elevator permits, and similar approvals or certificate by governing authorities and franchised services, assuring the Owner's full access and use of completed Work.
- .2 Submit the Contractor's punch list of items to be completed or corrected and written request for inspection.
- .3 Complete final start-up, testing, and commence instruction and training sessions on all major building systems including HVAC and controls, intercom, data communications, fire alarm, telephone, fire sprinkler, security and clocks, and establish a Date of Commissioning.
- .4 Make final changeover of locks and transmit new keys to the Owner, and advise the Owner of the changeover in security provisions.
- .5 Discontinue or change over and remove unnecessary temporary facilities and services from the project site.
- .6 Advise the Owner on coordination of shifting insurance coverages, including proof of extended coverages as required.
- .7 Complete final cleaning.

The work is not Substantially Complete unless the Architect reasonably judges that the Work can achieve Final Completion within sixty (60) days (or such other period of time as is specified in the Contract Documents), appropriate cleaning has occurred, all designated systems and parts are commissioned and usable, including balancing of the HVAC system, utilities are connected and operating normally and training sessions have occurred, all required temporary occupancy permits, pressure vessel permits, elevator permits, and similar approvals or certificate by governing authorities and franchised services, assuring the Owner's full access to the Work have been issued, O & M manuals have been submitted for review, and the Work is accessible by normal vehicular and pedestrian traffic routes. The fact that the Owner may occupy the Work or a designated portion thereof does not indicate that the Work is Substantially Complete or is acceptable in whole or in part, nor does such occupation toll or change any liquidated damages due the Owner.

§ 9.8.1.2 Date of Commissioning of Operational Systems. The systems of the Work so designated in the Contract Documents are considered "Operational Systems." Unless otherwise specified in the Contract Documents, the Operational Systems include the HVAC system, the data communications system(s), the intercom system, the life safety system(s), the clock system, the telephone system, and the security system. When the Contractor considers that the Operational Systems are complete and fully functional, up and running and ready for normal operation and functional performance testing (as may be specified overall or for any phases), and after all pre-commissioning checklists have been completed, the Contractor shall so notify the Architect in writing a minimum of thirty (30) days prior to the Date of Substantial Completion for that portion or phase as fixed in the Contract Documents. The Architect will then schedule a pre-commissioning inspection and observe the functional performance tests of these systems identified in the Contract Documents to determine whether the Operational Systems are complete and ready for normal operation. If the Architect's inspection discloses that the Operational Systems are not Substantially Complete or that any item is not in accordance with the requirements of the Contract Documents, the Contractor shall expeditiously, and before the Date of Commissioning, complete or correct such item upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect to determine completion of the Operational Systems and pay the costs associated with the reinspections, including fees of any commissioning agent and the Architect and its consultants. As each of the Operational Systems is determined to be complete, the Architect will notify the Owner in writing, which shall establish the Date of Commissioning. Training of Owner personnel shall not begin until the Date of Commissioning and shall be conducted prior to departure of the

installing entity from the site by appropriate Subcontractor personnel on site who are knowledgeable with the construction and operation of each system. The Operational Systems shall not be deemed Substantially Complete until they have operated, without incident or issue, for fourteen (14) consecutive days following the Date of Commissioning. Warranties on the Operational Systems required by the Contract Documents shall commence on the Date of Substantial Completion, unless otherwise provided, but the Contractor shall retain the responsibility to maintain the systems until Final Acceptance. The Date of Commissioning shall not have an effect on the duties of the parties at Substantial Completion.

§ 9.8.1.3 Indemnification. The Contractor shall defend, indemnify, and hold harmless the Owner and the Architect and their agents, employees, and consultants, successors and assigns from and against all claims, damages, losses and expenses of third parties, direct and indirect, or consequential, including costs, design professional fees, and attorneys' fees incurred by the Owner related to such claims and in proving the right to indemnification, arising out of or resulting from the failure of the Contractor to attain the Date of Commissioning less than thirty (30) days prior to the Date of Substantial Completion fixed by the Contract Documents. In particular, the Contractor acknowledges that a 30-day period after the Date of Commissioning and prior to occupancy is specified during which all HVAC, mechanical, electrical, control and environmental management systems are fully operational under procedures and loads intended to provide unoccupied space with positive performance for pre-occupancy environmental documentation, and the systems are scheduled to operate under a procedure intended to dissipate out-gassing that may occur from interior and other materials.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. The Contractor shall proceed promptly to complete and correct items on the list and shall immediately clean up any dust or debris created through punch list work activities. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list and upon verification by the Architect that all permits, approvals, testing, training and other submittals and administrative actions required under the Contract Documents for obtaining Substantial Completion have been satisfied, the Architect and, at its option, the Owner, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. If the Owner or Architect determines that the Work or designated portion is not substantially complete, the Contractor shall expeditiously complete the Work or designated portion, and again request an inspection. The Contractor shall pay the costs associated with this third and any further re-inspections.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that, upon approval of the Owner, shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion, except that warranties for HVAC equipment shall commence with acceptance of the Commissioning Report by the Architect and/or the AHJ. The Contractor shall attach and submit with the executed Certificate of Substantial Completion the Temporary (TCO) and Final Certificate of Occupancy as well as a written list of each outstanding and unresolved Claim; any Claim not so submitted and identified, other than retainage and the undisputed balance of the GMP, shall be deemed waived and abandoned. If the Owner or Architect determines that the Work or designated portion is not Substantially Complete, the Contractor shall expeditiously complete the Work or designated portion, again request an inspection, and pay the costs associated with the re-inspection, including Architect and consultant fees.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Any items not included by the Architect but required or necessary for Final Completion of the Contract shall be supplied and installed by the Contractor as a part

of the GMP, notwithstanding if the items were not recorded by the Architect. Upon written acceptance of the Certificate of Substantial Completion by the Owner and the Contractor, and upon the Contractor's Application for Payment and consent of surety if any, the Owner shall make payment as provided in the Contract Documents. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. NO further payment will be due or owing until the payment following Final Completion.

§ 9.8.6 The Contractor shall prepare, continue to monitor with the Architect, and cause to be completed, all punch lists with respect to the activity of each Subcontractor and report weekly to the Owner on all outstanding punch list items. Beginning sixty (60) days before the scheduled date of Substantial Completion, the Contractor shall prepare reports weekly, identifying items to be completed in order to obtain required certificates of occupancy and make recommendations to the Owner with respect to effectuating the earliest possible completion. The Contractor shall include this report as a schedule item on its Construction Schedule.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may, upon written notice to the Contractor and AHJ approval, take possession of, operate, occupy or use any completed or partially completed portion of the Work at any stage. Such partial occupancy or use may commence whether or not the portion is substantially complete. Unless otherwise agreed in writing, such possession, use or operation shall not be deemed an acceptance of any portion of the Work, nor accelerate the time for any payment to the Contractor under the Contract, nor prejudice any rights of the Owner under the Contract or under any insurance, bond, guaranty or other requirement of the Contract, nor relieve the Contractor of the risk of loss or any of its obligations under the Contract, nor establish a Date of Substantial or Final Completion, nor establish a date for termination or partial termination of the running of liquidated damages, nor constitute a waiver of any Owner claims. If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, or fails to achieve Final Completion of the Work within sixty (60) days of Substantial Completion (or such other period of time as is specified in the Contract Documents), the Owner may take possession of, use or operate all or any part of the Work without an increase in the GMP or the Contract Time on account of such possession or use. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Final Completion

§ 9.10.1.1 The Contractor shall cause punch list items to be completed within sixty (60) days of Substantial Completion of each phase (or such other period of time as is specified in the Contract Documents) or within such reasonable period as may be required to correct the item (in the event that the punch list items are, because of their nature, incapable of correction during that period), provided that the Contractor commences to correct the item within that period and thereafter diligently and in good faith pursues the corrective action to completion. If, at fifteen (15) days after the Date of Substantial Completion, the Owner considers that the punch list items are unlikely to be completed within thirty (30) days of the date of Substantial Completion of each phase (or such other period of time as is specified in the Contract Documents), the Owner may, upon seven (7) days' written notice to the Contractor, take over and perform some or all of the punch list items. If the Contractor fails to correct the deficiencies within this seven (7) day period, the Owner may back-charge the actual cost of performing this punch list work, including any design costs, plus 15% to account for the Owner's transaction costs.

§ 9.10.1.2 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance, the Architect will promptly make such inspection accompanied by the Contractor (if requested by the Architect or Owner). If the Architect or Owner determines that some or all of the punch list items are not accomplished, the Contractor shall be responsible to the Owner for all costs, including re-inspection fees, for any subsequent Architect's inspection to determine compliance with the punch list. When the Architect finds all punch list items complete and the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly notify the Owner and the Contractor in writing that, to the best of the Architect's knowledge,

information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.1.3 The Contractor is liable for, and the Owner may deduct from any amounts due the Contractor, all Architect, engineer or other design consultant fees and all Commissioning Agent and Contractor fees incurred by the Owner for services performed more than sixty (60) days after Substantial Completion of all the Work (or such other period of time as is specified in the Contract Documents), whether or not those services would have been performed prior to that date had Final Completion been achieved in a timely manner.

§ 9.10.1.4 When the Architect finds that the Work has been concluded, a final occupancy permit has been issued, any commissioning process and validation process have been successfully concluded and the Commissioning Report has been accepted by the Architect and/or the AHJ, and the Contractor has submitted all the items identified in Section 9.10.1.5 to the Architect, the Contractor may submit a final Application for Payment. The Architect will then promptly issue a final Certificate for Payment stating that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Architect's final Certificate for Payment shall establish the date of Final Completion upon its execution by the Owner.

§ 9.10.1.5 "Final Completion" will be attained when the Contractor has accomplished the following:

- .1 Complete all requirements listed in Section 9.8 for Substantial Completion.
- .2 Complete all remaining punch list items and remaining Work, and obtain approval by Architect and Owner that all Work is complete.
- .3 Obtain a final certificate of occupancy (if only a temporary certificate of occupancy was issued at Substantial Completion).
- .4 Submit final change order and final Application for Payment.
- .5 Submit record documents, any final property survey, and operation and maintenance manuals required by the Contract Documents.
- .6 Deliver tools, spare parts, extra stock of material and similar physical items to the Owner as required by the Contract Documents.
- .7 Complete final cleaning after punch list work (in addition to the final cleaning that was required to obtain Substantial Completion).
- .8 Complete instruction and training sessions on all major building systems including, but not limited to, HVAC, intercom, data communications, fire alarm, telephone, fire sprinkler, emergency power, security and clocks.
- .9 Submit executed warranties.
- .10 Make final changeover of locks and transmit new keys to the Owner, and advise the Owner of the changeover in security provisions.
- .11 Discontinue or change over and remove temporary facilities and services from the project site.
- .12 Advise the Owner on coordination of shifting insurance coverages, including proof of extended coverages as required.
- .13 Acceptance of the final Commissioning Report by the Owner, Architect, and AHJ as applicable.
- .14 All copies of Instruments of Service, except the Contractor's record set, have been returned to the Owner or are suitably accounted for to the Owner.

§ 9.10.2 Final Acceptance and Payment

§ 9.10.2.1 Neither final payment nor any retained percentage shall become due until the City Council has formally accepted the Project ("Final Acceptance"). To achieve Final Acceptance, the Architect must have issued a final Certificate for Payment under Section 9.10.1.4, an occupancy permit must have been issued, Final Completion must have occurred, and the Contractor has submitted the following to the Architect and the Owner:

- .1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, except for any claims that are specifically identified on the affidavit (Affidavit of Payment of Debts and Claims, AIA Form G706 or equivalent);

- .2 other data establishing payment or satisfaction of or protection against obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner (Contractor's Affidavit of Release of Liens, AIA Form G706A or equivalent). If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees;
- .3 pursuant to RCW 39.12.040, an Affidavit of Wages Paid from the Contractor and from each Subcontractor of any tier certified by the Industrial Statistician of the Washington State Department of Labor and Industries, with the fees paid by the Contractor or Subcontractor;
- .4 a letter from the Architect indicating that the Work is complete and recommending Final Acceptance of the Project by the Owner;
- .5 certification that the materials in the Work are "lead-free" and "asbestos-free";
- .6 a certified statement that the Contractor has closed all necessary permits or otherwise met the requirements of all governing jurisdictions related to this Project, including but not limited to all city or county departments, health districts and utility districts, provided to Owner with a copy of all closed or signed-off permits;
- .7 recorded documents;
- .8 all warranties, guarantees, training, manuals, operation instructions, certificates, spare parts, maintenance manuals and stock, specified excess material, as-built drawings and other documents, training or items required by the Contract Documents or local governmental entities; and
- .9 all submittals and information sufficient for the Owner to submit apprenticeship utilization data as required by RCW 39.04.320(5)(a).

§ 9.10.2.2 Pursuant to Chapter 60.28 RCW ("Lien for Labor, Materials, Taxes on Public Works"), completion of the Contract Work shall occur upon Final Acceptance.

§ 9.10.3 Lien Notices shall be served at:

A copy shall be submitted to the Architect.

§ 9.10.4 Release of Retainage: The retainage will be held and applied by the Owner as a trust fund in a manner required by Chapter 60.28 RCW. Release of the retainage will be processed in ordinary course of business upon the expiration of sixty (60) days following Final Acceptance of the Work by the Owner provided that no notice of lien shall have been given as provided in Chapter 60.28 RCW, that no Claims have been brought to the attention of the Owner and that the Owner has no claims under this Contract; and provided further that, for state-funded projects, release of retention has been duly authorized by the State. The following items must also be obtained prior to release of retainage: pursuant to Chapter 60.28 RCW, a certificate from the Department of Revenue; pursuant to Chapter 50.24 RCW, a certificate from the Department of Employment Security; and a certificate from the Department of Labor and Industries.

§ 9.10.5 Waiver of Claims

§ 9.10.5.1 Final Payment by Owner: The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, statutory retainage, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5.2 Final Payment to Contractor: Acceptance of final payment by the Contractor, a Subcontractor, or a material or equipment supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled and attached to the Contractor's final Application for Payment.

§ 9.10.5.3 The execution of a Change Order shall constitute a waiver of Claims by the Contractor arising out of the Work to be performed or deleted pursuant to the Change Order, except as specifically described in the Change Order. Reservations of rights will be deemed waived and are void unless the reserved rights are specifically described in detail to the satisfaction of the Owner and are initialed by the Owner.

§ 9.10.6 If a Subcontractor of any tier refuses to furnish a release or waiver required by the Owner, the Owner may (a) retain in the fund, account, or escrow funds in such amount as to defray the cost of foreclosing the liens of such claims and to pay attorneys' fees, the total of which shall be no less than 150% of the claimed amount, or (b) accept a bond from the Contractor, satisfactory to the Owner, to indemnify the Owner against such lien. If any such lien remains unsatisfied after all payments from the retainage are made, the Contractor shall refund to the Owner all moneys that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.7 The Contractor and all Subcontractors of any tier shall maintain books, ledgers, records, documents, estimates, bids, correspondence, logs, schedules, emails, facsimiles, and other tangible and electronic data and other evidence relating or pertaining to the costs and/or performance of the Contract ("records") to such extent and in such detail as will properly reflect and fully support compliance with the requirements of the Contract Documents and with all costs, charges and other amounts of whatever nature. The Contractor shall preserve such records for a period of six (6) years following the date of Final Acceptance under the Contract and for such longer period as may be required by any other provision of the Contract. Within seven (7) days of the Owner's request, the Contractor agrees to make available at the office of the Contractor during normal business hours all records for inspection, audit and reproduction (including electronic reproduction) by the Owner or its representatives. These requirements shall also be applicable to each Subcontractor of any tier and included in each Subcontract and purchase order issued with respect to the Work, except fixed-price Subcontracts where the price is \$25,000 or less. The Contractor agrees, on behalf of itself and Subcontractors of any tier, that any rights under RCW 42.56 will commence at Final Acceptance, and that the invocation of such rights at any time by the Contractor or a Subcontractor of any tier, or their respective representatives, shall initiate an equivalent right to disclosures from the Contractor and Subcontractors of any tier for the benefit of the Owner. Failure to fully comply with any requirements of this Section shall constitute a material breach of contract and shall constitute a waiver of all claims by the Contractor and any Subcontractor that does not fully comply.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

§ 10.1.1 The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall have the right to control and shall be solely and completely responsible for conditions of the work site, including safety of all persons and property, during performance of the Work. The Contractor shall maintain the Work site and perform the Work in a manner that meets statutory and common-law requirements for the provision of a safe place to work. This requirement shall apply continuously and not be limited to working hours. Any review by the Owner or the Architect of the Contractor's performance shall not be construed to include a review of the adequacy of the Contractor's safety measures in, on or near the site of the Work.

§ 10.1.2 No action or inaction of the Owner or the Architect relating to safety or property protection or a violation thereof shall in any way: (1) relieve the Contractor of sole and complete responsibility for the violation and the correction thereof, or of sole liability for the consequences of said violation; (2) impose any obligation upon the Owner or Architect to inspect or review the Contractor's safety program or precautions or to enforce the Contractor's compliance with the requirements of this Article 10; (3) impose any continuing obligation upon the Owner or Architect to ensure the Contractor performs the Work safely or to provide such notice to the Contractor or any other person or entity; (4) affect the Contractor's sole and complete responsibility for performing the Work safely or the Contractor's responsibility for the safety and welfare of its employees and the employees of Subcontractors of any tier; or (5) affect the Contractor's responsibility for the protection of property, staff and the general public.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on or involved in the Work and other persons who may be affected thereby;

- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss. The Contractor shall comply with all notices and comply with all requests from the Owner regarding the safety and protection of the Owner's patients, visitors, and staff. The Contractor shall comply with the safety regulations set forth in "Safety Standards for Construction" and "General Safety Standards" and any other requirements published by the Washington State Department of Labor and Industries. 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 and Health 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 to all excavation, trenching and ditching operations. In case of conflict between any such requirements, the more stringent applicable regulation or requirement shall apply.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall maintain at the work site office or other well-known place at the work site all materials (e.g., a first aid kit) necessary for giving first aid to the injured, and shall establish, publish and make known to all employees procedures for ensuring immediate removal to a hospital or a doctor's care, persons, including employees, who may have been injured on the site. Employees shall not be permitted to work on the site before the Contractor has established and made known procedures for removal of injured persons to a hospital or a doctor's care. The Contractor and/or any Subcontractors shall ensure that at least one of such employees has a valid, effective first aid card. The Contractor shall provide all persons working on the Project Site with information and training on hazardous chemicals in their work at the time of their initial assignment, and whenever a new hazard is introduced into their work area.

.1 Information. At a minimum, the Contractor shall inform persons working on the Project Site of:

- a. The requirements of Chapter 296-62 WAC, General Occupational Health Standards;
- b. Any operations in their work area where hazardous chemicals are present; and
- c. The location and availability of written hazard communication programs, including the required list(s) of hazardous chemicals and material safety data sheets required by Chapter 296-62 WAC.

2. Training. At a minimum, the Contractor shall provide training for persons working on the Project Site which includes:

- a. Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.);
- b. The physical and health hazards of the chemicals in the work area;
- c. The measures such persons can take to protect themselves from these hazards, including specific procedures the Contractor, or its Subcontractors, or others have implemented to protect those on the Project Site from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used; and
- d. The details of the hazard communications program developed by the Contractor, or its Subcontractors, including an explanation of the labeling system and the material safety data sheet, and how employees can obtain and use the appropriate hazard information.

§ 10.2.4 Pursuant to Chapter 49.70 RCW et seq., “Worker and Community Right to Know Act,” and Chapter 296-802 WAC et seq. the Contractor shall provide Owner copies of and have available at the Site a workplace survey or material safety data sheets for all Hazardous Materials under the control or use of Contractor or any Subcontractor at the Site. The Contractor shall not be entitled to any additional Contract Time or compensation arising from its failure or alleged failure to comply with this statute or regulation.

§ 10.2.5 All Work shall be performed with due regard for the safety of the public. Contractor shall perform the Work so as to cause a minimum of interruption of vehicular traffic or inconvenience to pedestrians. All arrangements to care for such traffic shall be Contractor’s responsibilities. All expenses involved in the maintenance of traffic by way of detours shall be borne by Contractor.

§ 10.2.6 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work and explicitly permitted by the Contract Documents, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall keep on site at all times a spill response kit for the protection of storm water.

§ 10.2.7 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor’s obligations under Section 3.18.

§ 10.2.8 The Contractor shall designate a responsible member of the Contractor’s organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor’s superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.9 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.10 At all times until the Owner’s occupancy of the Work or a designated portion of the Work, the Contractor shall protect from damage, weather, deterioration, theft, vandalism and malicious mischief, and shall bear the risk of any uninsured loss or destruction of, or injury to damage to, all materials, equipment, tools, and other items incorporated or to be incorporated in the Work or designated portion, or consumed or used in the performance of the Work or designated portion and all Work in process and completed Work or designated portion. Protection of the Work shall include but not be limited to protection of soils, subgrade preparation, exterior concrete, masonry, sealant, gypsum sheathing, roofing and interior finishes. The Contractor is responsible for any delays or costs resulting from the Contractor’s failure to protect the Work from weather damage, weather, deterioration, theft, vandalism and malicious mischief. Contractor is further responsible for any deductible amounts related to any insurance coverage, without reimbursement.

§ 10.2.11 Any notice given to the Contractor by the Owner or the Architect of a safety or property protection violation will not: (1) relieve the Contractor of sole and complete responsibility for the violation and the correction thereof, or for sole liability for the consequences of said violation; (2) impose any obligation upon the Owner or Architect to inspect or review the Contractor’s safety program or precautions or to enforce the Contractor’s compliance with the requirements of this Article 10; or (3) impose any continuing obligation upon the Owner or Architect to provide such notice to the Contractor or any other persons or entity.

§ 10.2.12 Injury or Damage to Person or Property

If the Contractor suffers injury or damage to person or property because of an alleged act or omission of the Owner, or of others for whose acts the Owner may be legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the Owner within a reasonable time not exceeding twenty-one (21) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. This Section does not apply to Claims, damages for additional costs or time, acceleration, or delay.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, as defined by CERCLA, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect in writing of the condition. The Contractor shall proceed with the Work in areas not affected.

§ 10.3.2 Upon receipt of the Contractor's notice, and with the Owner's agreement, the Owner shall obtain the services of a licensed laboratory to reasonably verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection, but the Owner shall not be responsible for any delay resulting from the Contractor's objection to such person or entity. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time may be extended appropriately and the GMP may be increased by the amount of the Contractor's demonstrated and reasonable additional costs of shutdown, delay, and start-up, which adjustments shall be accomplished as provided in Articles 7, 8 and 15.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity or if the removal of such material or substance was a part of the Contractor's Work.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault, misuse, or negligence in the use and handling of such materials or substances. The Contractor shall store all hazardous materials safely, whether or not required by Contract Documents. The Contractor shall not install hazardous materials, including without limitation asbestos, lead, mercury, or polychlorinated biphenyl (PCB), in the Work.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without fault or negligence on the part of the Contractor and if the remediation was not a part of the Contractor's scope of Work under the Contract Documents, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.3.7 To the extent that this Project involves the remediation of contaminated property, the Contractor shall comply with chapters 64.44 and 70A.300 RCW and any provisions of the Washington Administrative Code promulgated thereunder, including the use of authorized contractors as provided in RCW 64.44.060. The Contractor shall comply with all applicable requirements of chapter 70A.205 RCW and any provisions of the Washington Administrative Code promulgated thereunder.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

§ 10.5 Public Safety and Convenience

The Contractor shall conduct its Work so as to ensure the least possible obstruction to vehicular traffic and inconvenience to the general public and others in the vicinity of the Work and to ensure the protection of persons, property and natural resources. No road or street shall be closed to the public except with the permission of the Owner and the proper governmental authority. Fire hydrants and FDCs on or adjacent to the Work shall be accessible to firefighting equipment at all times. Temporary provisions shall be made by the Contractor to ensure the use of sidewalks, fire lanes, private and public driveways and proper functioning of gutters, sewer inlets, drainage ditches and culverts, irrigation ditches and natural water courses, if any, on the Work site.

§ 10.6 Weather Protection

Temporary weather protection of the Work is the responsibility of the Contractor as necessary to proceed in accordance with the Construction Schedule and environmental conditions as defined in the Contract Documents. Weather protection shall include but not be limited to protection of soils, subgrade preparation, exterior concrete, masonry, sealant, gypsum sheathing, roofing, and interior finishes. Delays and costs resulting from the Contractor's failure to protect the Work from damage due to weather or resulting from the failure of the Contractor to follow the recommendations of the Owner's geotechnical engineer are the sole responsibility of the Contractor.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located possessing an A.M. Best's policyholder's rating of A- or better and a financial rating of no less than VII and reasonably acceptable to the Owner, an occurrence-based Commercial General Liability Insurance Policy, which shall provide personal injury, bodily injury and property damage liability to cover the Contractor's operations, including Subcontractors and suppliers of any tier; owned, non-owned and hired vehicles; on work the Contractor may subcontract or sublet to others; and on the indemnity provisions of this Contract, including but not limited to premises, products/completed operations, personal injury, blanket contractual liability, explosion, collapse or underground (XCU), employment related practices coverage, and stopgap employer's liability. This insurance will name the Owner and employees, any required governmental agencies and others designated in the Contract Documents as additional insureds for all coverages required by Section 11.1 and will include a severability of interest (cross liability clause) for Work performed under this Contract. The Contractor's policy shall be designated primary coverage for both defense and indemnity, and any Owner's policies excess. Such limits of liability insurance shall have per project general aggregate provisions and shall not be less than the following:

COVERAGE	LIMITS OF LIABILITY
I. Commercial General Liability:	
Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability	
Each Occurrence	\$1,000,000
Per Location Aggregate/Per Project Aggregate	\$2,000,000
General Aggregate Per Occurrence	\$2,000,000
Products & Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
II. Commercial Automobile Liability	
Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or non-owned vehicles used in the operation, installation and maintenance of facilities under this Contract. This policy shall include all	

COVERAGE	LIMITS OF LIABILITY
owned, non-owned and hired autos. Combined Single Limit	\$1,000,000
III. Workers' Compensation (applicable to the State of Washington)	
Per Occurrence	Statutory
Employer's Liability	\$1,000,000
Disease Each Employee	\$1,000,000
Disease Policy Limit	\$1,000,000
Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000
IV. Pollution Legal Liability	
Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000
V. Builders Risk	
Builder's "All Risk" Property Insurance including Flood & Earthquake Coverage to include personal property of others in the care, custody and control of the contractor. Coverage should be written for 100% of the completed value. For additions or repairs of existing building structures, coverage to include contractor's interest in improvements, repairs, additions, alterations to completed buildings and subject to items described in "a".	Contract Value including Soft Costs and Customary extensions of Coverage
VI. Umbrella Excess Liability	
Policy applies over and above General Liability, Auto & Employers Liability	
Each Occurrence	\$5,000,000
Annual Aggregate	\$5,000,000

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages shall be written on an occurrence basis, shall be maintained without interruption from the date of commencement of the Work until the date of Final Acceptance and termination of any coverage required to be maintained after final payment. Completed operations coverage shall remain in force for three (3) years after Final Acceptance. The insurance described above shall include coverage for underground, collapse and explosion exposures. In addition, the Contractor shall purchase and maintain insurance for claims under workers' compensation (industrial insurance), disability benefit and other similar employee benefit acts in the state statutory amount and Stop Gap Liability Insurance (Employer's Contingent Liability Insurance) with coverage of at least \$1,000,000 each occurrence/each accident. All policies and certificates must be signed copies and policies shall contain a provision that written notice must be provided to the Owner 30 days before the policies are canceled; Contractor must provide the Owner 45 days' written notice by certified mail before the policies expire or any coverages afforded under the policy are reduced, limits decreased, or the additional insureds removed. The Contractor shall furnish to the Owner and Architect copies of any subsequently issued endorsements amending, modifying, altering or restricting coverage or limits. Furthermore, such policies or certificates shall contain a clause verifying that the policy contains coverage for blanket contractual liability including both oral and written contracts and that liability coverages include protection for underground, collapse and explosion and that the indemnification provisions of Section 3.18 are acknowledged. Losses up to the deductible amount or otherwise not covered by insurance shall be the responsibility of the Contractor.

§ 11.1.3 Before issuance of the Notice to Proceed, the Contractor shall furnish the Owner with an electronic copy of Certificates of Insurance on ACORD Certificate of Liability Insurance as evidence of all insurance required by the Contract Documents, including an endorsement to the insurance policies naming the Owner, its consultants and employees, and any required governmental agencies and others designated in the Contract Documents as additional insureds. The Contractor is not required to provide the Builder's Risk policy until the issuance of an Early Bid Package. If the Agreement is executed, no work can take place until the Certificates are furnished. The Contractor shall furnish to the Owner copies of any subsequently issued endorsements amending, modifying, altering or restricting coverage limits. Furthermore, such policies or certificates shall contain a clause verifying that the policy

contains coverage for blanket contractual liability including both oral and written contracts and that liability coverages include protection for underground, collapse and explosion and that the indemnification provisions of Section 3.18 are acknowledged. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. Upon written request, the Contractor will provide a copy of its policies to the Owner.

§ 11.1.4 The Owner's specification or approval of the insurance in this Contract or of its coverage or amount shall not relieve or decrease the liability of the Contractor under the Contract Documents or otherwise. Coverages are the minimum to be provided and are not limitations of liability under the Contract, indemnification, or applicable law provisions. The Contractor may, at its expense, purchase larger coverage amounts. Notwithstanding anything herein to the contrary, the Contractor shall provide all bonding, insurance, and permit documentation as required by governmental entities for all portions of the Project.

§ 11.1.5 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations giving at least thirty (30) days' notice of cancellation.

§ 11.1.6 The Owner shall be listed on the Certificate as Certificate Holder.

§ 11.1.5 The insurance must be written on an "occurrence" basis. This must be indicated on the Certificate.

§ 11.1.7 The Contractor shall keep this insurance in force during the term of the Contract and for thirty (30) days after the Physical Completion date. The Contractor shall provide the City and all Additional Insureds with written notice of any policy cancellation, within two business days of their receipt of such notice.

§ 11.1.8 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, suspend work or terminate the contract.

§ 11.1.9 All costs for insurance shall be incidental to and included in the unit or lump sum prices of the contract and no additional payment will be made.

§ 11.1.10 The Contractor shall ensure and require that Subcontractors of any tier have insurance coverage to cover bodily injury and property damage on all operations and all vehicles owned or operated by Subcontractors of all tiers in the amount of \$1,000,000 per occurrence with a \$2,000,000 aggregate limit. Also, the Subcontractors shall name both the Contractor and the Owner as an additional insured giving at least thirty (30) days' notice of cancellation. Also, the Subcontractors shall name the Contractor and the Owner and cause the commercial liability coverage required by the Contract Documents to include, using ISO Form CG 2010 11/85 or its equivalent, (1) the Owner, its directors, officers, and agents, the Architect and the Architect's consultants as additional insureds for claims arising out of or caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner, its directors, officers, and agents, as an additional insured for claims arising out of or caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.11 If the Owner is damaged by the failure of the Contractor to maintain any of the insurance in this Article 11 or to so notify the Owner, then the Contractor shall bear all costs attributable thereto. The Owner may withhold payment pending receipt of all certificates of insurance. Failure to withhold payment shall not constitute a waiver.

§ 11.1.12 Insurance requirements to operate a drone over the construction site or any other property. If Contractor or its Subcontractors of any tier use or operate a drone or unmanned aircraft on or over the construction site or any other property of the Owner, Contractor shall provide to Owner evidence of sufficient insurance such as aircraft liability insurance to cover any damages, including bodily injury or property damage, caused by the operation and use of such drone or unmanned aircraft prior to its use on or above the construction site or any other property of the Owner. The limit of liability shall be at least \$1,000,000 each occurrence. If a Subcontractor of any tier is the

operator of such a drone or unmanned aircraft, the evidence of such insurance shall be provided by that Subcontractor.

§ 11.1.13 If the Owner is damaged by the failure of the Contractor to maintain any of the bonds or insurance in this Article 11 or to so notify the Owner, then the Contractor shall bear all costs attributable thereto. The Owner may withhold payment pending receipt of all certificates of insurance and bonds. Failure to withhold payment shall not constitute a waiver.

§ 11.1.14 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.2 Builders' Risk Insurance

§ 11.2.1 Unless the Owner elects to procure builder's risk insurance directly, as a Negotiated Support Service the Contractor shall purchase and maintain until Final Acceptance, in a company or companies lawfully authorized to do business in the State of Washington, property insurance written on a builder's risk "all-risk" or equivalent policy for to cover the course of construction upon the entire Work at the site and all materials or equipment furnished or installed by the Owner on the Project, in the amount of the initial GMP, plus the value of all subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis.. This insurance shall insure against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirement, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. The policy shall include as named insured the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. Each loss may be subject to a deductible clause, currently \$10,000, but not to exceed \$15,000. Except for losses caused by the Owner or by natural occurrences, losses up to the deductible amount or otherwise not covered by insurance shall be a Cost of the Work within the GMP. For losses caused by the Owner or by natural occurrences, losses up to the deductible amount shall be a cost of the Work and shall entitle the Contractor to an increase in the GMP for that deductible amount. The policy shall be endorsed to allow complete or partial occupancy by the Owner before or after Substantial Completion without the insurer's approval.

§ 11.3 Waivers of Subrogation

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Contract or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner does not waive the subrogation rights to the extent of its property insurance on structures or portions of structures that do not comprise the Work. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance that are required by the Contract Documents and that are purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.4 Adjustment and Settlement of Insured Loss

§ 11.4.1 A loss insured under the property insurance required by the Contract shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.4.2. The Owner shall distribute the proceeds so received in accordance with such agreement as the parties in interest may reach. If no agreement is reached, any damaged Work shall first be repaired or replaced, and payment therefor made from the separate account by Change Order or by payment to a separate contractor, at Owner's option; further disbursements will then be determined pursuant to the provisions of Section 4.4. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make

payments to their consultants and Subcontractors in similar manner. Any inconsistent policy provisions will supersede the provisions of this Section.

§ 11.4.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

§ 11.5 Performance Bond and Payment Bond

§ 11.5.1 Contractor's Bonds: The Contractor shall secure and pay for, from a surety company acceptable to the Owner and admitted and licensed in the State of Washington and possessing an A.M. Best's policyholder's rating of A or better and a financial rating of no less than VIII, separate bonds covering the faithful performance of the Contract and payment of obligations arising under the Contract Documents, each in the full amount of the MACC plus sales tax, pursuant to Chapter 39.08 RCW ("Contractor's Bond"). Within ten (10) days of executing the GMP Amendment, the Contractor shall deliver the bonds to the Owner. **THE OWNER MAY WITHHOLD PAYMENT TO THE CONTRACTOR UNTIL SUCH SURETY BONDS ARE RECEIVED AND MAY TERMINATE THE CONTRACT FOR CAUSE.** The Contractor shall be responsible for any delay in the Contract Time because of failure to submit acceptable bonds.

§ 11.5.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.5.3 Subcontractors' Performance and Payment Bonds: Each Subcontractor so required by a bidding package or RCW 39.10.380 shall secure and pay for, from a surety company acceptable to the Owner and the Contractor and admitted and licensed in the State of Washington, bonds covering the faithful performance of the subcontract and payment of obligations arising under the Contract Documents related to the subcontract, each in the full amount of the subcontract sum, pursuant to Chapter 39.10 RCW and Chapter 39.08 RCW. Within ten (10) days of entering into the subcontract, and before any payment is due, the Subcontractor shall deliver copies of the bonds to the Owner and to the Architect.

§ 11.6 If the Owner is damaged by the failure of the Contractor to maintain any of the bonds or insurance in this Article 11 or to so notify the Owner, then the Contractor shall bear all costs attributable thereto. The Owner may withhold payment pending receipt of all certificates of insurance and bonds. Failure to withhold payment shall not constitute a waiver.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's or the Owner's request or to requirements of a governmental authority or as otherwise specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, Owner, or governmental authority, be uncovered for the requesting party's examination and be replaced at the Contractor's expense without change in the GMP or the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect, Owner or governmental authority has not specifically requested to examine prior to its being covered and for which neither the Contract Documents nor governmental laws or regulations required inspection, the Architect, Owner or governmental authority may request to see such Work and it shall be uncovered by the Contractor. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor employed by the Owner, and in that event the Owner or the separate contractor shall be responsible for payment of such costs.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense without any increase to GMP or Contract Time.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one (1) year after the later of the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under the Contract Documents, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it according to the requirements of this Section 12.2.2 with no change in the Cost of the Work promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. If the Contractor does not promptly in accordance with the provisions of this Section 12.2.2 initiate work to correct the Work designated in the notice, the Owner may proceed to correct the Work and may, without further notice, dispose of materials and equipment as it sees fit, and the Contractor will be liable for all costs. This obligation shall survive acceptance of the Work under the Contract and termination of the Contract, is in addition to other warranties provided by contract or law, and does not establish a time limit for damages.

- .1 If, in the Owner's opinion, the nonconforming Work either prevents the use of a portion of the facility and/or immediate response is required to prevent further damage or to restore security to prevent external entrance, and/or is a safety hazard (e.g., break in the waterline, sprinkler system failure, failure of the heating system, inability to close or lock exterior door, etc.), the Contractor shall initiate corrective work on site the same day if the Contractor is notified prior to noon, or by noon the following day if notified after noon, and shall complete corrective action within 48 hours.
- .2 If, in the Owner's opinion, the nonconforming Work has the potential of becoming a safety hazard, of affecting internal security, or of limiting the use of the facility (e.g., potential loss of heat in a single office, failure of one or more plumbing fixtures, loose carpet seam in corridor, interior door lock not working, etc.), the Contractor shall initiate corrective work on site within two (2) working days and shall complete corrective action within five (5) working days.
- .3 If, in the Owner's opinion, the nonconforming Work does not have an impact on the use of the building, but must be fixed (e.g., interior door closer broken, window cracked, wall covering seam coming loose, etc.), the Contractor shall initiate corrective work on site within fourteen (14) days and shall complete corrective action within twenty-eight (28) days.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents

may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the GMP will be reduced by the greater of the (1) cost of correction, or (2) diminution of value of the Work that is not in accordance with the requirements of the Contract Documents. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law and Venue

This Contract shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. Any action or suit brought in connection with this Contract shall be brought in the Superior Court of Clark County, Washington.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party respect to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.2.3 If a majority of the ownership or the control of Contractor is acquired by a third party, and such acquisition reasonably imperils performance or creates a conflict of interest that the Owner, in its sole discretion, cannot reasonably reconcile, then the Owner may terminate this Contract at any time pursuant to Section 14.2, except that the Owner shall give the Contractor thirty (30) days' written notice of termination and the opportunity for the Contractor to cure prior to termination.

§ 13.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to the designated representative as identified in the Agreement, or to an officer of the corporation for which it was intended; or if delivered at, or sent by facsimile, registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. The date of written notice shall be the earlier of the date of personal delivery, actual receipt by facsimile, or three (3) calendar days after the date of postmark.

§ 13.4 Rights and Remedies

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. The Contractor's sole remedy for Claims, disputes and other matters in question of the Contractor, direct or indirect, arising out of, or relating to, the Contract Documents or breach thereof, except Claims which have been waived under the terms of the Contract Documents, however, is the dispute resolution procedure of Article 15.

§ 13.4.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4.3 If any portion of this Contract is held to be void or unenforceable, the remainder of the Contract shall be enforceable without such portion.

§ 13.5 Tests and Inspections

§ 13.5.1 Tests, inspections, and approvals of portions of the Work shall be made at an appropriate time and as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to or provided by the Owner, or with the appropriate public authority, and the Owner shall bear all related costs of necessary tests, inspections, and approvals, except that the Contractor will be responsible for any costs of re-testing and any extra costs caused by the Contractor. The Contractor shall give the Architect and Owner timely notice of when and where tests and inspections are to be made so that the Architect and Owner may be present for such procedures. The independent testing agency shall prepare the test reports, logs and certificates applicable to the specific inspections and tests and promptly and simultaneously deliver the specified number of copies of them to the designated parties. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.5.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Owner and Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.5.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner and Architect.

§ 13.5.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. The Contractor shall provide the Owner and Architect at least forty-eight (48) hours' notice prior to all tests and inspections.

§ 13.5.7 If the Owner is responsible under the Contract Documents, law or regulation to pay only for an inspection of any inspector, consultant or Architect, the Owner shall be required to pay only for the first actual inspection. If the Contractor arranges for an inspection and an extra cost is incurred because the inspector is required to wait, to leave without inspecting, to perform a partial inspection, to return to complete or re-inspect, or otherwise to expend time other than for the primary inspection, the Contractor shall be responsible for all such costs to the extent caused by the Contractor. If the Contractor does not pay the charges for which it is responsible within thirty (30) days of billing, the Owner has the option to pay the charges directly and back-charge the Contractor on the next progress payment for the amount paid plus a 10% handling fee.

§ 13.5.8 No acceptance by the Owner of any Work shall be construed to result from any inspections, tests or failures to inspect or test by the Owner, the Owner's representatives, the Architect or any other person. No inspection, test, failure to inspect or test, or failure to discover any defect or nonconformity by the Owner, the Owner's representatives, the Architect or any other person shall relieve the Contractor of its responsibility for meeting the requirements of the Contract Documents or impair the Owner's right to reject defective or nonconforming items or right to avail itself of any other remedy to which the Owner may be entitled, notwithstanding the Owner's knowledge of the defect or nonconformity, its substantiality or the ease of its discovery. Entities performing inspections and/or testing do not have the authority to direct the Contractor's means and methods and are not agents or representatives of the Owner or Architect. Inspections which meet the requirements of code shall not override the requirements of the Contract Documents, which may be more stringent.

§ 13.6 Statutes and Other Requirements

§ 13.6.1 The Contractor shall abide by the provisions of all applicable Washington statutes and regulations. Although a number of statutes are referenced in the Contract Documents, these references are not meant to be a complete list and should not be relied upon as such.

§ 13.6.2 Law Against Discrimination

During the term of this Contract, Contractor will not discriminate against any employee or applicant for employment in accordance with RCW Chapter 49.60, including, but not limited to creed, religion, race, color, age, sex, marital status, sexual orientation, sexual identity, pregnancy, military status, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical disability, unless based upon a bona fide occupational qualification. The Contractor will take affirmative action to ensure that applicants and employees are treated fairly, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical disability. Such action shall include all terms and conditions of employment, compensation and benefits, including apprenticeship.

§ 13.6.3 Provisions for Aged and Handicapped Persons

The Contractor shall comply with pertinent statutory provisions relating to public works under Chapter 70.92 RCW ("Provisions in Buildings for Aged and Handicapped Persons") and the Americans With Disabilities Act.

§ 13.6.4 Safety Standards

The Contractor shall comply with pertinent provisions of Chapter 49.17 RCW ("Washington Industrial Safety and Health Act") and Chapter 296-155 WAC ("Safety Standards for Construction Work").

§ 13.6.5 Unemployment Compensation

Pursuant to Chapter 50.24 RCW ("Contributions by Employers") in general and RCW 50.24.130 in particular, the Contractor shall pay contributions for wages for personal services performed under this Contract or arrange for a bond acceptable to the Commissioner of the Washington State Employment Security Department.

§ 13.6.6 Asbestos Removal

To the extent this Project involves asbestos removal, the Contractor shall comply with Chapter 49.26 RCW ("Health and Safety – Asbestos") and any provisions of the Washington Administrative Code promulgated thereunder, and the applicable section of the Specifications should be viewed for possible insurance required for the applicable Subcontractor.

§ 13.6.7 Lead, Copper, and Cadmium in Drinking Water

No materials or products may be installed or otherwise incorporated into the Work that contain lead, copper, or cadmium that exceed the actionable limits of the Environmental Protection Agency and the Safe Drinking Water Act. Neither the Architect nor the Owner will approve any substitution of material or product that may contain harmful levels of lead, copper, or cadmium, whether in plumbing, water fixtures, or any other fixture, equipment or incorporated building material. At the time of Final Acceptance, Contractor shall submit a letter to the Owner that no lead contamination or lead products have been installed in the building or anywhere throughout the Project in violation of this contractual provision and applicable laws.

§ 13.6.8 Pursuant to Chapter 49.70 RCW ("Worker and Community Right to Know Act") and WAC 296-901 et seq., the Contractor shall provide the Owner copies of and have available at the Project Site a workplace survey or material safety data sheets for all "hazardous" chemicals under the control or use of Contractor or any Subcontractor of any tier at the Project Site. Contractor shall not be entitled to any additional Contract Time or compensation arising from its failure or alleged failure to comply with this statute or regulation.

§ 13.6.9 Security. All contractors, suppliers, and visitors who come onto the site may be required to display an identification badge on their person. The Contractor shall be required to administer the distribution of badges and maintain a sign-out log. All badges are to display the signature of the Project Superintendent. All Owner-supplied badges shall be returned before retainage is released.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 Except as provided by RCW 60.28.080, the Contractor may terminate the Contract if the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor,

their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven (7) days' written notice to the Owner and Architect (during which period the Owner has the opportunity to cure), terminate the Contract and recover from the Owner payment for Work properly executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, as well as reasonable overhead and profit on Work executed, direct costs incurred by reason of such termination, and direct damages. The total recovery of the Contractor shall not exceed the unpaid balance of the GMP less the remaining contingencies.

§ 14.1.4 If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven (7) additional days' notice to the Owner and the Architect (during which period the Owner has the opportunity to cure), terminate the Contract and recover from the Owner as provided in Section 14.1.3. The total recovery of the Contractor shall not exceed the unpaid balance of the GMP less the remaining contingency.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may, upon seven (7) days' written notice to the Contractor, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the Work or the Contract for cause if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make prompt payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 fails to comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority having jurisdiction;
- .4 fails to prosecute the Work or any portion thereof with sufficient diligence to ensure the Substantial Completion of the Work within the Contract Time;
- .5 is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency;
- .6 staffs the Project with personnel different from the personnel listed in its proposal; or
- .7 otherwise is guilty of a material or substantial breach of or default under a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) days' notice, terminate employment of the Contractor on all or a portion of the Work and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

- .2 Accept assignment of subcontracts pursuant to Section 5.4;
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work; and
- .4 Take or direct any or all of the actions in Section 14.5.1.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the GMP, less the remaining contingencies, exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. The remaining contingency shall accrue to the Owner. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall survive termination of the Contract.

§ 14.2.5 If the Owner terminates a portion of the Work, the Contractor shall continue the performance of the remainder of the Work in accordance with the Contract Documents to the extent not terminated.

§ 14.2.6 If, after the Contractor has been terminated pursuant to this Section 14.2 or otherwise for cause, it is determined that none of the circumstances set forth in Section 14.2.1 exists, then such termination shall be considered a termination for convenience pursuant to Section 14.4.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The GMP and Contract Time shall be adjusted for changes in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the GMP shall be consistent with the terms of the Contract Documents. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor consistent with the Contract Documents for Work properly executed and costs necessarily incurred by reason of such termination (such as the cost of settling and paying claims arising out of the termination of Work under subcontracts or orders), along with reasonable profit on the Work not executed, not to exceed the Contractor's Fee in the Agreement of the Cost of the Work not performed. The total sum to be paid to the Contractor under this Section 14.4 shall not exceed the GMP, less the remaining contingencies, as reduced by the amount of payments otherwise made, by the larger of (1) the actual value, or (2) the scheduled value of Work not terminated, and as otherwise permitted by this Contract. The amounts payable to the Contractor shall exclude the fair value of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner or to a buyer pursuant to Sections

14.5.1.6 or 14.5.1.7.

§ 14.5 Effects of Termination by Owner

§ 14.5.1 Unless the Owner directs otherwise, after receipt of a Notice of Termination from the Owner pursuant to Section 14.2 or 14.4, the Contractor shall promptly:

- .1 stop Work under the Contract on the date and as specified in the Notice of Termination;
- .2 place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of any portion of the Work that is not terminated;
- .3 procure cancellation of all orders and subcontracts, upon terms acceptable to the Owner, to the extent that they relate to the performance of Work terminated;
- .4 assign to the Owner all of the right, title and interest of the Contractor under all orders and subcontracts, as directed by the Owner, in which case the Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- .5 with the Owner's approval, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts not assigned to the Owner;
- .6 transfer title and deliver to the entity or entities designated by the Owner the fabricated or unfabricated parts, Work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated, and the completed or partially completed plans, drawings, information and other property related to the Work;
- .7 use commercially reasonable efforts to sell any property of the types referred to in Section 14.5.1.6. The Contractor shall not be required to extend credit to any buyer, and may acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner, and the proceeds of any such transfer or disposition may be applied in reduction of any payments to be made by the Owner to the Contractor;
- .8 take such action as may be necessary or as directed by the Owner to preserve and protect the Work and property related to this Project in the possession of the Contractor in which the Owner has an interest; and
- .9 continue performance only to the extent not terminated.

§ 14.5.2 In arriving at any amount due the Contractor after termination, the following deductions shall be made:

- .1 all unliquidated advance or other prior payments on account made to the Contractor applicable to the terminated portion of the Contract;
- .2 any claim the Owner may have against the Contractor;
- .3 an amount necessary to protect the Owner against outstanding or potential liens or Claims;
- .4 the agreed price for or the proceeds of sale of any materials, supplies or other things acquired by the Contractor or sold, pursuant to the provisions of Section 14.5.1.7, and not otherwise recovered by or credited to the Owner; and
- .5 the remaining contingency.

§ 14.5.3 If (and only if) the termination pursuant to Section 14.4 is partial, the Contractor may file a Claim for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract. Any Claim by the Contractor for an equitable adjustment under this Section must be asserted within sixty (60) days from the effective date of the partial termination.

§ 14.5.4 The Contractor shall refund to the Owner any amounts paid by the Owner to the Contractor in excess of costs reimbursable under the Contract Documents.

§ 14.5.5 The Contractor shall, from the effective Date of Termination until the expiration of six (6) years after final settlement under this Contract, preserve and make available to the Owner, at all reasonable times at the office of the Contractor, and without charge to the Owner, all books, records, documents, photographs and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the terminated Work. The Owner may have costs reimbursable under this Article 14 audited and certified by independent certified public accountants selected by the Owner, who shall have full access to all the books and records of the Contractor.

§ 14.5.6 The damages and relief from termination by the Owner specifically provided in Article 14 shall be the Contractor's sole entitlement in the event of termination.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between Owner and Contractor arising out of or relating to the Contract Documents. Claims must be initiated in writing and include the information and substantiation required by the Contract Documents. The responsibility to substantiate Claims shall rest with the party making the Claim. Neither a Request for Information, nor a Construction Change Directive, nor a Change Order, nor a Change Order Proposal accepted by Owner, nor a reservation of rights, nor minutes of a meeting, nor a Daily Report, nor a ROM log entry, nor any other Claim or purported notice of Claim that fails to meet the requirements of the Contract Documents shall constitute a Claim.

§ 15.1.2 Notice. Except for Claims requiring notice before proceeding with the affected Work as otherwise described in the Contract Documents, Contractor shall submit written notice to Owner of such claim within ten (10) days after the date when Contractor first knew, or reasonably should have known, of the event or condition giving rise to the apparent claim. The notice must identify itself as a notice of a Claim and shall include a clear description of the event leading to or causing the Claim and describe the nature and impact of the Claim in reasonable detail. Notice is sufficient if the item is both discussed in the weekly meeting and listed in the "Notice" section of the meeting minutes as a notice item.

§ 15.1.3 Claim. Contractor shall submit a written Claim as provided herein within thirty (30) days of the notice. The Claim shall be deemed to cover all changes in cost and time (including direct, indirect, impact, and consequential) to which Contractor may be entitled to. It shall be fully substantiated and documented. At a minimum the Claim shall contain the following information:

- .1 A detailed factual statement of the Claim for additional compensation and time, if any, providing all necessary dates, locations, and items of Work affected by the Claim;
- .2 The date on which facts arose which gave rise to the Claim;
- .3 The name of each employee of the Owner or Owner's agent knowledgeable about the Claim;
- .4 The specific provisions of the Contract Documents which support the Claim;
- .5 Copies of any identified documents, other than the Contract Documents, that support the Claim;
- .6 If an adjustment in Contract Time is sought: the specific days and dates for which it is sought; the specific reasons Contractor believes an extension in Contract Time should be granted; and Contractor's analysis of its Construction Schedule to demonstrate the reason for the extension in Contract Time;
- .7 If an adjustment to the GMP is sought, the exact amount sought and a breakdown of that amount into categories as required herein;
- .8 A statement certifying, under penalty of perjury, that the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of the Contractor's knowledge and belief, that the Claim is fully supported by the accompanying data, and the amount requested accurately reflects the adjustment in the Contract Sum or Contract Time for which Contractor believes the Owner is liable.

§ 15.1.4 After Contractor has submitted a fully documented Claim that complies with all of the contract provisions, Owner shall respond in writing, to Contractor as follows:

1. If the Claim amount is less than \$50,000 with a decision within 60 days from the date the Claim is received; or
2. If the Claim amount is \$50,000 or more, with a decision with 60 days from the date the Claim is received, or with notice to the Contractor of the date by which it will render its decision. Owner will then respond with a written decision in such additional time.

§ 15.1.5 To assist in the review of the Contractor's Claim, Owner may visit the Project site, or request additional information, in order to fully evaluate the issues raised.

§ 15.1.6 Failure to submit the notice or Claim in accordance with this Section shall constitute an absolute and unconditional waiver, bar and release of such claim.

§ 15.1.7 The fact that Owner and Contractor may continue to discuss or negotiate a Claim that has or may have been defective or untimely under the Contract shall not constitute waiver of the provisions of the Contract Documents unless Owner and Contractor sign an explicit, unequivocal waiver approved by Owner. Actual or alleged prejudice shall not be required to enforce a notice or Claim-submittal provision of this Contract.

§ 15.1.8 Pending final resolution of a Claim except as otherwise agreed in writing, Contractor shall proceed diligently with performance of the Contract, and Owner shall continue to make payments in accordance with the Contract Documents. The time limits for submission of Claims are in addition to, and not in lieu of, the time limits for submission of requests for adjustments to the Contract Time and Contract Sum.

§ 15.1.9 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the GMP, written notice as provided herein shall be given before proceeding to execute the Work, and a written notice and a written Claim must be made in accordance with this Article 15, or it will be waived. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension, or (7) other reasonable grounds, a Claim shall be filed in accordance with this Article 15. The Contractor shall not be entitled to an increase in the GMP or Contract Time arising out of an error or conflict in or among the Contract Documents where the Contractor failed adequately to review the Contract Documents or failed to report the error or conflict to the Architect and the Owner in a timely manner consistent with the requirements of the Contract Documents. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.10 Claims for Additional Time

§ 15.1.10.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given, and a written Claim must be made in accordance with Article 15 or it will be waived. The Contractor's Claim shall include an estimate of any cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Any adjustment in the Contract Time arising from a Change or a Claim shall be limited to the change in the actual critical path of the Project directly caused thereby. If the delay was not caused by the Owner, the Contractor, a Subcontractor of any tier, or the Architect, or anyone acting on behalf of any of them, the Contractor is entitled only to an increase in the Contract Time in accordance with the Contract Documents but not a change in the GMP. If the delay was caused by the Contractor, a Subcontractor of any tier, or anyone acting on behalf of any of them, the Contractor is not entitled to an increase in the Contract Time or in the GMP.

§ 15.1.10.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction, and that the Work was on schedule (or not behind schedule through the fault of the Contractor) at the time the adverse weather conditions occurred. Neither the Contract Time nor the GMP will be adjusted for normal inclement weather. The Contractor shall be entitled to a change in the Contract Time only (but not a change in the GMP) if the Contractor can substantiate to the reasonable satisfaction of the Owner and Architect that there was materially greater than normal inclement weather considering the full term of the Contract Time and using a ten-year average of accumulated record mean values from climatological data compiled by the U.S. Department of Commerce National Oceanic and Atmospheric Administration for the locale closest to the Project, and that the alleged abnormal inclement weather actually extended the critical path of the Work. The change in Contract Time shall be provisional until Substantial Completion has been achieved, at which time the change in the Contract Time shall be the extent to which the total net accumulated number of calendar days lost due to inclement weather from commencement of the Work until Substantial Completion exceeds the total net accumulated number to be expected for the same period from the aforesaid data.

§ 15.1.11 In accordance with RCW 39.10.350(1)(g), the Owner will, in writing, accept, dispute, or reject a request for equitable adjustment, change order proposal, or Claim within thirty calendar days after the receipt by the Owner of related documentation. If the request for equitable adjustment, change order proposal, or Claim is disputed or

rejected, the Owner shall state in writing why part or all of the request is disputed or rejected. If the Owner does not respond in writing to a request for equitable adjustment, change order, or Claim within such thirty calendar days, the Contractor shall not be deemed to have waived any right to the Claim process, and the request for equitable adjustment, change order request, or Claim shall be deemed denied.

§ 15.1.12 Claims Audit.

§ 15.1.12.1 All Claims filed against Owner shall be subject to audit at any time following the filing of the Claim. Failure of Contractor, or Subcontractors of any tier, to maintain and retain sufficient records to allow Owner to verify all or a portion of the Claim or to permit Owner access to the books and records of Contractor, or Subcontractors of any tier, shall constitute a waiver of the Claim and shall bar any recovery.

§ 15.1.12.2 In support of Owner audit of any Claim, Contractor shall, upon request, promptly, and in any event no later than the date provided by Owner, make available to Owner the following documents:

- .1 Daily time sheets and superintendent's daily reports;
- .2 Collective bargaining agreements;
- .3 Insurance, welfare, and benefits records;
- .4 Payroll registers;
- .5 Earnings records;
- .6 Payroll tax forms;
- .7 Material invoices, requisitions, and delivery confirmations;
- .8 Material cost distribution worksheet;
- .9 Equipment records (list of company equipment, rates, etc.);
- .10 Vendors', rental agencies', Subcontractors', and agents' invoices;
- .11 Contracts between Contractor and each of its Subcontractors, and all lower-tier Subcontractor contracts and supplier contracts;
- .12 Subcontractors' and agents' payment certificates;
- .13 Cancelled checks (payroll and vendors);
- .14 Job cost report, including monthly totals;
- .15 Job payroll ledger;
- .16 Planned resource loading schedules and summaries;
- .17 General ledger;
- .18 Cash disbursements journal;
- .19 Financial statements for all years reflecting the operations on the Work. In addition, Owner may require, if it deems it appropriate, additional financial statements for three (3) years preceding execution of the Work;
- .20 Depreciation records on all company equipment whether these records are maintained by the company involved, its accountant, or others;
- .21 If a source other than depreciation records is used to develop costs for Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents;
- .22 All documents which relate to each and every Claim together with all documents which support the amount of any adjustment in GMP or Contract Time sought by each Claim;
- .23 Work sheets 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, all documents which establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals; and
- .24 Work sheets, software, and all other documents used by Contractor to prepare its Proposal.

§ 15.1.12.3 The audit may be performed by employees of Owner or a representative of Owner. Contractor, and its Subcontractors, shall provide adequate facilities acceptable to Owner, for the audit during normal business hours. Contractor, and all Subcontractors, shall make a good faith effort to cooperate with Owner's auditors.

§ 15.2 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes without limitation:

- .1 damages incurred by the Owner for rental expenses, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal and home office overhead and expenses including without limitation the compensation of personnel stationed there, for losses of financing, business and reputation, for losses on other projects, for loss of profit and for interest or financing costs.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.2 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents, to preclude Owner's claim of actual direct damages for Contractor's failure to complete the Project in the time required by the Contract Documents, or to preclude an obligation of the Contractor to indemnify the Owner for direct, indirect or consequential damages alleged by a third party.

§ 15.3 Mediation

§ 15.3.1 If a Claim is not resolved in the dispute resolution procedure of Section 15.1, neither the Contractor nor any Subcontractor or supplier of any tier may bring a claim or action against the Owner in litigation unless all unresolved claims are first subject to nonbinding mediation before a single mediator. This requirement cannot be waived except by an explicit written waiver signed by the Owner and the Contractor.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be filed in writing with the other party to the Contract, and the parties shall promptly attempt to mutually agree upon a mediator. If the parties have not reached agreement on a mediator within thirty (30) days of the request, either party may submit the unresolved Claims to either JAMS or Judicial Dispute Resolution, LLC ("JDR"), Seattle, Washington, or such other alternative dispute resolution service to which the parties mutually agree, for appointment of a single mediator according to its procedures.

§ 15.3.3 The parties to the mediation shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.3.4 An officer of the Contractor and the Owner's Superintendent or designee, each having full authority to settle the Claims, must attend the mediation session with authority to settle the Claim. To the extent there are other parties in interest, such as the Architect or Subcontractors or suppliers of any tier, their representatives, also with authority to settle the Claim, shall also attend the mediation session. Unless the Owner and the Contractor mutually agree in writing otherwise, all unresolved Claims shall be considered at a single mediation session that shall occur after Substantial Completion but prior to Final Acceptance by the Owner.

§ 15.4 Litigation

§ 15.4.1 The Contractor may bring no litigation on Claims unless such Claims have been properly raised and considered in the procedures of this Article 15. The Contractor shall have the burden to demonstrate in any litigation that it has complied with all requirements of this Article 15. All unresolved Claims of the Contractor shall be waived and released unless the Contractor has complied with the time limits of the Contract Documents, and litigation is served and filed within the earlier of (a) 120 days after the Date of Substantial Completion approved in writing by the Owner, or (b) ninety (90) days after Final Acceptance. This requirement cannot be waived except by an explicit written waiver signed by the Owner and the Contractor. The pendency of a mediation (the time period between the written mediation request and the date of mediation) shall toll these deadlines until the earlier of the mediator providing written notice to the parties of impasse or thirty (30) days after the date of the mediation session. Neither the Contractor nor a Subcontractor of any tier, whether claiming under a bond or lien statute or otherwise, shall be entitled to attorneys' fees directly or indirectly from the Owner (but may recover attorneys' fees from the bond or statutory retainage fund itself to the extent allowable under law).

§ 15.4.2 The Owner may join the Contractor as a party to any litigation or arbitration involving the alleged fault, responsibility, or breach of contract of the Contractor or Subcontractor of any tier.

A RESOLUTION relating to the approval of a disposition and development agreement between the City of Vancouver and Palindrome Heights Limited Partnership; establishing the terms and conditions under which the Heights District Site C lot will be developed and ground leased by the City to Palindrome Heights Limited Partnership; and authorizing the City Manager to execute the disposition and development agreement.

Staff Report: 202-25

To: Mayor and City Council
From: City Manager
Date: October 6, 2025

Subject

Heights Site C Disposition and Development Agreement

Key Points

- City staff request City Council to adopt the attached resolution to approve the Disposition and Development Agreement between the City of Vancouver and Palindrome Heights Limited Partnership (Palindrome) for the development of Site C in the Heights District located at E. Mill Plain Boulevard and Devine Road.
- In August 2024, Palindrome was selected as developer for Site C following a Request for Proposals (RFP) process led by the Heights Community Investment Committee.
- Palindrome plans to develop a mixed-use building with 104 affordable housing units, along with a ground floor market hall and onsite resident services.
- City staff and Palindrome have agreed to the terms of the Disposition and Development Agreement which are outlined below, and subject to Council's approval.

Strategic Plan Alignment

Economic Opportunity – a place where a wide variety of businesses of all sizes grow and thrive

Housing and Human Needs – meeting basic needs and partnering with organizations to support the community

Vibrant and Distinct Neighborhoods – a variety of accessible places and spaces

Present Situation

In March 2024, the City and the Heights Community Investment Committee (HCIC) issued a Request for Proposals (RFP) for the first three development sites in the Heights District located along E. Mill Plain Boulevard and Devine Road, known as sites B, C and P. After two months of deliberation, the HCIC selected Palindrome as the lead developer for Site C in August 2024. Thereafter, the City entered into an Exclusive Negotiation Agreement (ENA) with Palindrome that set forth that the parties will negotiate the terms of a Disposition and Development Agreement (DDA) for Site C's development. City staff and Palindrome have negotiated the terms of the DDA which are outlined in this staff report and subject to City Council approval.

Palindrome partnered with Latino Leadership NW to co-develop and co-own the building and are

partnering with Latino Network to deliver onsite resident services. The development team includes Salazar Architects, DOWL, Standridge Engineering and Pacificap Construction.

The development will include the following.

- 104 housing units restricted to households earning 30% to 80% of the Area Median Income (AMI). Unit types range from studios to 1-3 bedrooms and live/work units.
- 7,300 square feet Cohesion Market Hall with taproom as the anchor tenant surrounded by micro retail spaces with 51% of commercial spaces to be leased to businesses owned by local and Black, Indigenous and People of Color (BIPOC).
- Onsite resident services provided by Latino Network tailored to community needs.
- Approximately 111 parking spaces in a podium parking structure.

The substantive terms of the DDA are as follows.

- The property will be ground leased for 99 years with the ground lease estimated to begin in Q1 2027 prior to the commencement of construction. The ground lease terms are outlined below. City staff will return to City Council for review and action on the ground lease around Q4 2026.
- Palindrome is obligated to meet key project milestones such as planning and permitting, award of funding and commencement and completion of construction. Construction is projected to start in Q1 2027 and complete in Q3 2028.
- The housing must be affordable for at least 40 years and the intent is that the housing will remain affordable in perpetuity given the City's ownership of the land and ability to tie discounted ground lease terms to ongoing affordability.
- Palindrome is required to build the street and utility infrastructure necessary to support the project. Contingent upon funding, the City will construct the developer required infrastructure improvements through a federal grant awarded for the Heights Grand Loop project.
- The public benefits of the project include:
 - 104 affordable housing units at 30-80% AMI.
 - Opportunities for small, local and BIPOC businesses in the Market Hall. The Market Hall is located on the ground floor facing the future civic plaza. The DDA includes leasing restrictions to ensure 51% of the tenants are BIPOC and local to Vancouver. The Market Hall will also deliver accessible and affordable commercial rental spaces through the construction of shared facilities, small leasable spaces and flat rental fees.
 - Environmentally friendly features include a fully electric building, a green roof, solar panels and sustainable, durable building materials.
 - Diverse contracting initiatives to maximize opportunities for minority-owned, women-owned and emerging small businesses. Targets have been set that a minimum of 20% of subcontractor contracts are awarded to BIPOC, women-owned, and emerging small businesses and a minimum of 15% of the workforce are apprentices. Where appropriate, the general contractor must right size bid packages and conduct intentional outreach to BIPOC, women-owned and emerging small business firms to offer equal opportunity.

The substantive elements which will be in a forthcoming ground lease agreement (to be reviewed separately by City Council) are as follows.

- 99-year lease term projected to begin in Q1 2027 prior to the construction start date.
- Rent is calculated by multiplying the appraised value of the property (using the value set forth in the February 25, 2025, appraisal prepared for the City by Colliers International) by a 5.7%

cap rate. Rent is adjusted annually by 3%.

- In order to facilitate development of affordable housing, the rent is discounted for the first 40 years of the lease term. Years 1-20 rent is discounted by 90%, years 21–40 rent is gradually discounted every 5 years from 80% to 50%.
- No rent is due for the first 30 months of the lease term during construction and leasing until the project has positive cash flow.
- Rent will be reset at year 41 and will be recalculated based on a re-appraisal of the property and renewal of affordable housing commitments.
- For the first 15 years of the lease term, if the developer falls below a 1.15 debt service coverage ratio, rent will not be due and will be accrued to the next pay period. The developer must provide the City with financial reports as evidence to support the rent accrual.

The total project cost is estimated at approximately \$46 million (\$442,000/unit), supported by significant investment from the City to advance its development. The project also leverages multiple public funding sources, including Low Income Housing Tax Credits and financing from the Washington State Department of Commerce Housing Trust Fund. These are highly competitive programs with annual application cycles, and as such, the construction timeline is contingent upon successful award of these funds. Nevertheless, the project is considered competitive and has a likelihood of securing the necessary funding. The estimated city investments are outlined in the table below.

Land	\$700,000*
Affordable Housing Fund	\$4,100,000
Construction Sales Tax Exemption (City's portion)	\$396,000
Impact Fee Reductions (Parks, Traffic)	\$463,000
Total	\$5,659,000

* Land value of \$1,010,000 less net present value of discounted ground lease of \$306,000

With a total value of non-City investment of \$41 million and a total value of City investment of \$5.66 million, the project achieves a leverage ratio of 7.25:1. In addition to this economic return, the City will realize substantial public benefits as previously described.

Next steps

Separate approvals will be needed for the project to progress including:

- The City's independent regulatory review of land use and engineering and building permits, projected to be completed by the end of 2026.
- City Council's review of the ground lease which is estimated to take place in Q4 2026.

Provided public funding is secured in the 2025/2026 funding cycle, construction can begin in Q1 2027 and be completed in Q3 2028.

Advantage(s)

- Facilitates the implementation of the Heights District Plan.
- Provides affordable housing across a range of income levels, addressing a desperate

community need.

- Offers opportunities for local, minority-owned businesses to grow and thrive, meeting the goals of the City's Economic Development Strategy and Heights Plan.
- Offers opportunities for minority-owned contractors and apprentices.

Challenge(s)

The project requires significant financial commitment from the City to ensure the project's financial viability. The investment is necessary to advance the development of affordable housing and support the implementation of the Heights District Plan.

Budget Impact

The City's estimated investment in the project is approximately \$5.65 million. This figure includes contributions from the Affordable Housing Fund, the value of City-owned land, the City's portion of the construction sales and use tax exemptions, and impact fee reductions, as detailed above. The contribution of land value, as well as the construction and use tax deferrals, both impact future revenues to the City's General Fund. The impact fee reductions will reduce amounts available for future transportation and parks projects.

Prior Council Review

- Council Workshop on August 26, 2024
- Council Meeting on September 16, 2024

Action Requested

On Monday, October 6, 2025, advance the resolution, setting the date for the second reading and public hearing for October 13, 2025 to finalize and approve the resolution approving the Disposition and Development Agreement (DDA) between the City of Vancouver and Palindrome Heights Limited Partnership (DDA) and authorize the City Manager, or designee, to execute the agreement, related implementation documents and certain amendments to the DDA.

Staff Contact

Amy Stewart, Real Estate Project Manager, Patrick Quinton, Economic Development Director, amy.stewart@cityofvancouver.us, patrick.quinton@cityofvancouver.us

Attachments:

1. Presentation
2. Resolution
3. Disposition and Development Agreement (Site C)



CITY OF
Vancouver
WASHINGTON

Heights Sites C & P Disposition & Development Agreements

Patrick Quinton, Director
Amy Zoltie, Real Estate Project Manager
Economic Prosperity & Housing
October 13, 2025



Agenda

- Project Teams
- Site Plans and Programs
- DDA Terms
- Public Benefits
- Ground Lease Terms
- City Investments
- Project Timeline and Next Steps



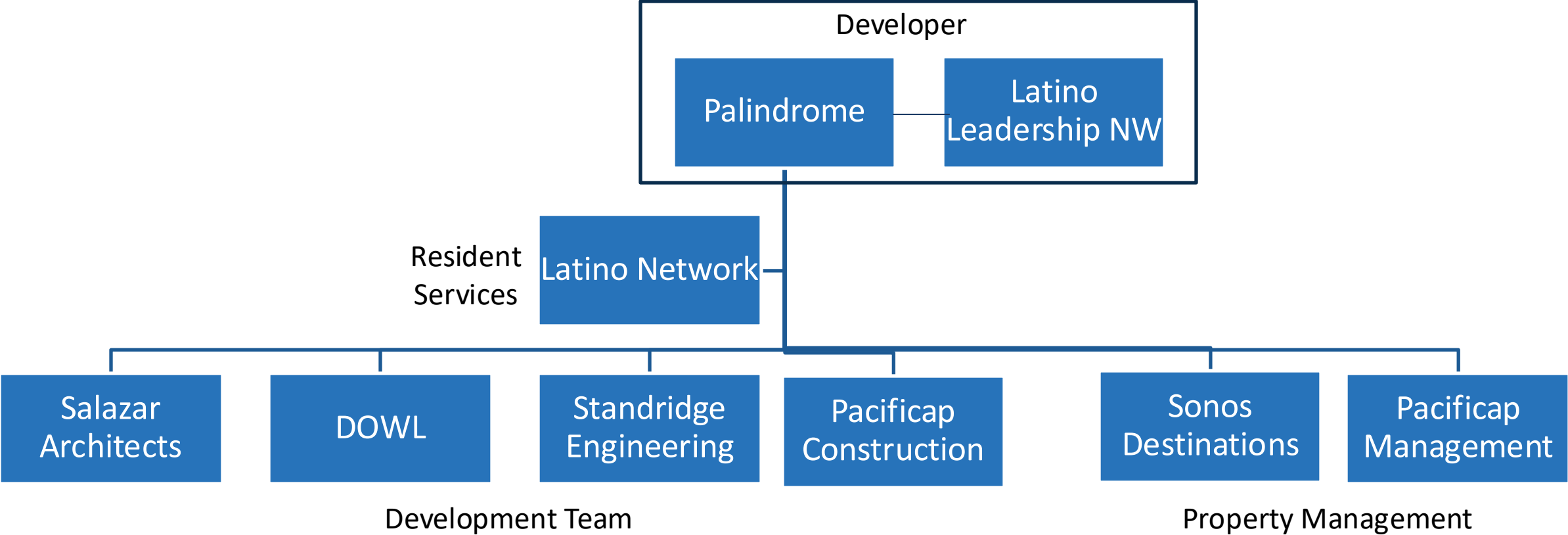
Palindrome – Site C



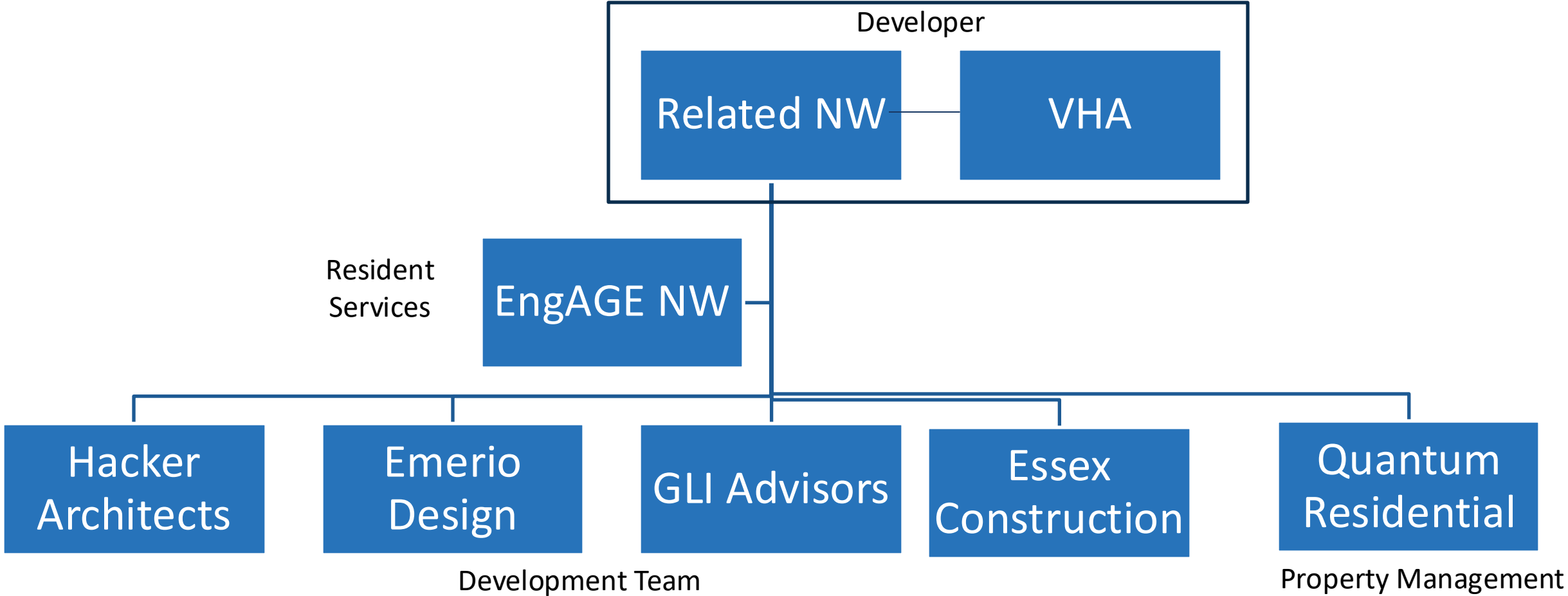
Related NW & VHA – Site P



Palindrome Project Team (Site C)



Related NW/VHA Project Team (Site P)



Proposed Programs

Palindrome (Site C)	Related/VHA Family Bldg (Site P)
• 104 units @ 50-80% Area Median Income (AMI) • 7,300 sf Cohesion Market Hall with taproom and micro retail units for local, BIPOC businesses • Onsite resident services • ~111 parking spaces in podium parking structure	• 80 units @ 30-60% Area Median Income (AMI) • Family housing building • Onsite resident services & programming • ~60 surface parking • Phased building construction



Proposed Unit Mix

	Palindrome - Site C					Related/VHA Family Site P			
Unit Type	Total	30% AMI	50% AMI	60% AMI	80% AMI	Total	30% AMI	50% AMI	60% AMI
Studio	7	1	3	3	0	14	2	2	10
1-bed	49	4	19	19	7	27	4	2	21
2-bed	22	2	9	9	2	23	4	2	17
3-bed	23	3	9	8	3	16	1	3	12
Live/Work	3	0	1	1	1				
Total	104	10 (10%)	41 (39%)	40 (38%)	13 (13%)	80	11 (14%)	9 (11%)	60 (75%)



DDA Terms

Timing

- 10-year DDA term + ongoing obligations also captured in 99-year ground lease
- Close on ground leases by Q2 2027
- Construction 19-24 months

Performance

- Contractual performance dates
- Completion guaranties
- Standard default and termination provisions
- Funding and construction of infrastructure if Grand Loop schedule delays project schedule

Program

- Housing affordable for at least 40 years
- Market Hall leasing requirements for Palindrome (Site C)



Public Benefits

Affordable Housing

- 184 units @ 30-80% AMI

Economic Development

- Site C Market Hall focus on local & BIPOC businesses
- 51% of tenants must be local & BIPOC
- Micro retail spaces with shared facilities and flat rental fees

Resident Services

- Onsite resident services provided by Latino Network and EngAGE NW tailored to community needs

Workforce Initiatives

- 20% minimum DBE participation
- Apprenticeship and local workforce goals

Sustainability

- All electric buildings
- Green roof
- Solar panels
- Minimize construction waste



Ground Lease Terms

Lease Term	99 years. Commencement Date prior to construction start date
Rent Adjustments	3% annually
Rent Abatement	No rent for the first 30 months of lease term
Rent Discount Period	Years 1-40 rent will be discounted. Palindrome: Years 1-20 90% discount, Years 21-40 gradual discount every 5 years 80%-50% Related/VHA: 95% discount
Rent Reset	Rent reset triggered at year 41 with no discounts applied and recalculated based on re-appraisal and renewal of affordability
Rent Accrual (Palindrome Only)	For first 15 years of lease term, if developer falls below 1.15 debt service coverage, rent will not be due and will accrue to next pay period and a lump sum payment will be due. Developer to provide City with annual financial reports.



City Investments

	Palindrome	Related/VHA
Valuation Considerations	Site C	Site P
Land Valuation*	\$1,010,000	\$1,014,000
Net Present Value Market Rate Ground Lease (over 40 years)	\$1,558,000	\$1,400,000
Net Present Value Discounted Ground Lease (over 40 years)	\$306,000	\$87,546
City Investments		
Land	\$700,000**	\$1,312,000**
Affordable Housing Fund	\$4,100,000	\$4,000,000
Construction Sales Tax Exemption (COV only)	\$396,000	\$0
Impact Fee Reductions (Parks & Traffic)	\$463,000	\$351,000
Total	\$5,659,000	\$5,663,000

* Based on February 2025 appraisal

** Land value less NPV of discounted ground lease



Financial Return

	Palindrome	Related/VHA
	Site C	Site P
Project Cost	\$46M	\$38M
Public Investment	\$5.66M	\$5.66M
Leverage Ratio (Non-City/City investment)	7.25:1	5.9:1
Retail Sales Tax (40-year NPV – COV only)	\$312k	\$0
Construction Sales and Use Tax	\$0	\$288k
Utility Tax (40-year NPV – COV only)	\$1.3M	\$918k
Total Tax Revenue (40-year NPV - COV only)	\$1.6M	\$1.2M



Next Steps



Council Action
on DDAs

October 2025



Design &
Permitting

Q2 2025 – Q4 2026



Ground Lease
Approval

Q4 2026



Construction

Q2 2027-Q3 2029



Requested Action

- Approve Disposition and Development Agreements (DDA) between City of Vancouver and selected developers
- Adopt Resolutions authorizing City Manager to execute DDAs on behalf of City Council

10/13/2025

RESOLUTION NO. M- [Resolution Number]

A RESOLUTION relating to the approval of a disposition and development agreement between the City of Vancouver and Palindrome Heights Limited Partnership; establishing the terms and conditions under which the Heights District Site C lot will be developed and ground leased by the City to Palindrome Heights Limited Partnership; and authorizing the City Manager to execute the disposition and development agreement.

WHEREAS, the City owns real property commonly referred to as the Heights District Site C located at 5411 E. Mill Plain Blvd in City of Vancouver, Washington (the “Property”) and represents one of the first redevelopment sites envisioned in the Heights District Plan adopted by City Council in August 2020; and

WHEREAS, on March 11, 2024, the City, in consultation with the Heights Community Investment Committee, issued a “Heights District Request for Proposals” for the Property and, following a thorough public review process, selected Palindrome, an affiliate of Palindrome Heights Limited Partnership as the preferred developer for the Property; and

WHEREAS, on September 19, 2024, the City and Palindrome entered into an Exclusive Negotiation Agreement which was subsequently extended through October 31, 2025; and

WHEREAS, the City and Palindrome have negotiated a disposition and development agreement between the City and Palindrome Heights Limited Partnership that details the terms of the disposition and development of the Property into a mixed-use building with affordable housing and retail; and

RESOLUTION - 1

WHEREAS, a public hearing was duly noticed and held by the City Council on Monday October 13, 2025, regarding the approval of the attached disposition and development agreement.

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY OF VANCOUVER:

Section 1. The City Council hereby authorizes the City Manager to execute on behalf of the City the disposition and development agreement in the substantive form, attached hereto as Exhibit "A." The City Manager is authorized to negotiate and execute any documents necessary to implement the agreement, as well as any amendments to the agreement, except those that, modify the financial terms of the agreement, or that are inconsistent with the material substantive terms set forth in SR _____.

ADOPTED at a Regular Meeting of the Vancouver City Council this _____, of _____, 2025.

Anne McEnery-Ogle, Mayor

Attest:

Natasha Ramras, City Clerk

Approved as to form:

Nena Cook, City Attorney

RESOLUTION - 2

LAND DISPOSITION AND DEVELOPMENT AGREEMENT

BETWEEN

**CITY OF VANCOUVER, WASHINGTON,
a Washington municipal corporation**

AND

PALINDROME HEIGHTS LIMITED PARTNERSHIP, a Washington limited partnership

October ____ 2025

LAND DISPOSITION AND DEVELOPMENT AGREEMENT

THIS LAND DISPOSITION AND DEVELOPMENT AGREEMENT (this “DDA” or “Agreement”) is made as of October __, 2025 (the “Effective Date”), by and between CITY OF VANCOUVER, a Washington municipal corporation (“City”), and Palindrome Heights Limited Partnership, a Washington limited partnership (the “Developer”), and its permitted successors and assigns. City and Developer are each referred to in this Agreement individually as a “Party” and collectively as the “Parties”.

RECITALS

A. These Recitals refer to and utilize certain capitalized terms that are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. City owns the real property commonly referred to as the Heights District, consisting of three development sites generally located at E. Mill Plain Boulevard and Devine Road in Vancouver, Washington. The three project sites are referred to individually as Site B (“B”), Site C (“C”) and Site P (“P”), collectively as the “Sites” and identified in Exhibit A-1. The development of the Sites represents the first phase of redevelopment envisioned in the Heights District Plan (“District Plan”) adopted by the City in August of 2020.

C. On March 11, 2024, the City, in consultation with the Heights Community Investment Committee (“HCIC”), issued a “Heights District Request for Proposals” (the “RFP”) for the Sites and, following a thorough public review process, selected the Developer as the preferred developer for the Property.

D. This DDA is specifically for Site C at 5411 E. Mill Plain Blvd, Vancouver, WA legally described on Exhibit A-2 attached hereto (the “Property”).

E. As provided by the terms of this Agreement, the Parties anticipate that they will enter into a ground lease for the Property under the terms outlined in Section 3.2.

F. Consistent with the Heights District Plan and the current zoning designation for the Property, the Parties desire to cause the construction and development of the Property for the primary purposes of providing affordable housing and retail amenities. The development shall include the construction of a mixed-use building with 104 rent restricted housing units serving households whose income at initial occupancy does not exceed 80% Area Median Income (AMI) or lower together with ground floor retail space, including a 7,300 square foot market hall intended to contain local businesses and a craft brewery taproom (the “Improvements”).

G. The City and HCIC has determined that the Developer has the necessary expertise, skill and ability to carry out the commitments set forth in this Agreement and that this Agreement is in the best interests, and will materially contribute to the City’s economic development goals by the project aligning with the outcomes of the Heights District Plan and Heights Equitable

Development Plan, specifically providing affordable housing and retail space for small, minority owned businesses.

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer agree as follows:

ARTICLE 1.
DEFINITIONS AND EXHIBITS

Section 1.1 Definitions.

In addition to the terms defined elsewhere in this Agreement, the following definitions apply throughout this Agreement.

(a) “Affordability Requirements” means the affordable housing requirements set forth in the Use provisions below.

(b) “Agreement” or “DDA” means this Land Disposition and Development Agreement, including the attached Exhibits and all subsequent operating memoranda and amendments to this Agreement.

(c) “Certificate of Occupancy” means the final certificate of occupancy issued by the City, or comparable City sign-off, on the completion of construction of the Improvements.

(d) “City” means the City of Vancouver, Washington, a Washington municipal corporation, and its successors and assigns.

(e) “City Council” means the City Council of the City of Vancouver, Washington.

(f) “City Documents” shall mean, collectively, this Agreement, the Ground Lease, and all other documents required to be executed between Developer and City in connection with the transaction contemplated by this Agreement.

(g) “City Event of Default” has the meaning set forth in Section 7.3

(h) “City Indemnitees” includes the City, and its council members, officers, agents, consultants, and employees, each an “Indemnified Party”.

(i) “Closing Date” means the date of execution of the Ground Lease.

(j) “Completion Guaranty Agreement” means the Developer’s construction completion guaranty described in Section 2.5 and provided to the City by PacifiCap, Inc. as Guarantor in substantially the form attached hereto as Exhibit I.

(k) “Construction Plans” means all construction documentation upon which Developer, and Developer’s several contractors, shall rely on in building each and every part of the Improvements and shall include, but not necessarily be limited to, final architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications (also known as “working drawings”) and a time schedule for construction.

(l) “Deposit” means the Good Faith Deposit of Ten Thousand Dollars, made pursuant to the Exclusive Negotiating Agreement.

(m) “Developer” means Palindrome Heights Limited Partnership, a Washington limited partnership and its permitted successors and assigns.

(n) “Developer’s Affiliate” has the meaning set forth in Section 6.1.

(o) “Development” means Heights District Site C and the Improvements thereon.

(p) “Effective Date” has the meaning set forth in the first sentence of this Agreement.

(q) “Escrow” means the escrow established with the Title Company for the purpose of ground leasing the Property to Developer.

(r) “Event of Default” has the meaning set forth in Section 7.4.

(s) “Exclusive Negotiating Agreement” or “ENA” means that certain Exclusive Negotiating Agreement dated as September 19, 2024, between the City, Palindrome Properties Group, LLC and the Developer.

(t) “Frontage Improvements” has the meaning set forth in Section 4.9(b).

(u) “Hazardous Materials” means any substance, material, or waste which is: (1) defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “restricted hazardous waste”, “pollutant” or any other terms comparable to the foregoing terms under any provision of Washington law or federal law; (2) petroleum and any fraction thereof; (3) asbestos and asbestos containing materials; (4) polychlorinated biphenyls; (5) radioactive materials; (6) mold; (7) Methyl Tertiary Butyl Ether; or (8) determined by Washington, federal or local governmental authority to be capable of posing a risk of injury to health, safety, property, or the environment. Without limiting the foregoing, Hazardous Materials means and includes any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term, by any Hazardous Materials Laws including any federal, state or local environmental statute, regulation or ordinance presently in effect that may be promulgated in the future, as such as statutes, regulations and ordinances may be amended from time to time.

(v) “Hazardous Materials Laws” means all federal, state, and local laws, ordinances, regulations, orders and directives governing hazardous waste, hazardous substances, discharges of

pollutants to soil or groundwater, wastewater discharges, drinking water, air emissions, Hazardous Materials releases or reporting requirements, Hazardous Materials use, storage or disposal, and employee or community right-to-know requirements related to Hazardous Materials and the work being performed under this Agreement.

(w) “Improvements” has the meaning set forth in Recital G above.

(x) “Infrastructure Improvements Plan” means the plan set forth in Exhibit G describing the infrastructure improvements that Developer will undertake in accordance with Section 4.9 below.

(y) “Litigation Disclosure” means any pending actions, suits, arbitrations, claims or proceedings the City is subject to as described in Section 8.18(b)(6).

(z) “Memorandum of Disposition and Development Agreement” means the memorandum of Disposition and Development Agreement to be recorded against the Property. The form of the Memorandum of Disposition and Development Agreement is attached as Exhibit D.

(aa) “Memorandum of Ground Lease” means the memorandum of the Ground Lease to be recorded against the Property on the Closing Date. The form of the Memorandum of Ground Lease will be attached as an exhibit to the Ground Lease.

(bb) “Notice of Completion” has the meaning set forth in Section 4.14 below.

(cc) “Parties” means the City and Developer.

(dd) “Planned Public Improvements” means those public infrastructure improvements set forth in the Heights District Plan, including the Grand Loop that, upon securing funding, the City plans to construct as transportation infrastructure surrounding the Property, as depicted on the attached Exhibit E.

(ee) “Property” has the meaning set forth in Recital E.

(ff) “Property Preliminary Title Report” means Title Commitment No. 612896838 dated September 27, 2024.

(gg) “Related Parties” shall mean, with respect to City, its council members, officers, agents, representatives, and employees and, with respect to Developer, its officers, directors, employees, shareholders, agents, and representatives.

(hh) “Release” for the purposes of Section 3.6(e), means any spillage, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping, or disposing into the environment, including but not limited to the abandonment or discharging of barrels, containers, and other closed receptacles containing Hazardous Materials.

(ii) “Released Parties” has the meaning set forth in Section 3.6(d).

(jj) “Schedule of Performance” means the summary schedule of actions to be taken by the Parties pursuant to this Agreement to achieve development of the Improvements and ground leasing the Property to the Developer. The Schedule of Performance is attached to this Agreement and incorporated herein by this reference as Exhibit B. Any dates specified in the Schedule of Performance may be extended by written agreement of the Parties.

(kk) “Schematic Design” has the meaning set forth in Section 2.3 below.

(ll) “Sites” has the meaning set forth in Recital B above.

(mm) “Summary of Sources and Uses” means the summary of sources and uses for the construction of the Improvements on the Property. The Summary of Sources and Uses is attached hereto and incorporated herein as Exhibit C. the Summary of Sources and Uses may be amended by written agreement of the Parties, provided that such subsequent modifications that are agreed upon by the parties shall not require any amendment of this DDA.

(nn) “Term” has the meaning set forth in Section 1.3, below.

(oo) “Title Company” means the Vancouver, Washington office of Chicago Title/Fidelity National Title at 655 West Columbia Way, Suite 200, Vancouver, WA 98660, unless modified pursuant to Section 3.3.

Section 1.2 Exhibits and Schedules.

The following exhibits and schedules are attached to and incorporated in the Agreement:

- Exhibit A-1: Map of Site
- Exhibit A-2: Legal Description of Property
- Exhibit B: Schedule of Performance
- Exhibit C: Summary of Sources and Uses
- Exhibit D: Form of Memorandum of Disposition and Development Agreement
- Exhibit E: Planned Public Improvements
- Exhibit F: Grand Loop Plan
- Exhibit G-1: Infrastructure Improvements Plan
- Exhibit G-2: Depiction of Infrastructure Improvements Plan
- Exhibit G-3: Frontage Improvements
- Exhibit H: Market Hall Leasing Requirements
- Exhibit I: Completion Guaranty Agreement
- Exhibit J: Temporary Construction License Area

Schedule 5.6: City Self-Insurance Certification Letter

Schedule 8.18(b)(6): Litigation Disclosure

Section 1.3 Term.

The “Term” of this Agreement, shall commence on the Effective Date and shall continue for a period of ten (10) years following the Effective Date or the earlier termination of this Agreement.

ARTICLE 2.
PREDISPOSITION REQUIREMENTS

Section 2.1 Conditions Precedent to Ground Leasing the Property.

The requirements set forth in this Article are conditions precedent to the City’s obligations to ground lease the Property to the Developer, and all such conditions precedent must be satisfied in accordance with the dates set forth in the Schedule of Performance attached hereto as Exhibit B, as such times may be extended in writing by either Party. Performance and achievement of the actions set forth in this Article 2 constitute conditions precedent to ground leasing the Property. Satisfaction of these conditions depends on performance by Developer. Only the City can waive satisfaction of the conditions in this Article 2 and any such waiver must be in writing signed by the City Manager and approved as to form by the City Attorney.

Section 2.2 Summary of Sources and Uses.

The Developer shall submit a Summary of Sources and Uses, in a form acceptable to the City. The Parties hereby acknowledge that the Summary of Sources and Uses attached hereto as Exhibit C satisfies the requirements of this Section 2.2 and reflects the Financing Proposal provided by Developer pursuant to the ENA.

Section 2.3 Conceptual Site Plan and Design Considerations.

(a) Following the Effective Date, the Developer must deliver to the City a conceptual site plan and elevation drawings (“Schematic Design”) for the Improvements to be developed on the Property for informational purposes only. While the City and HCIC may provide input or comments in their proprietary roles, formal approval of the Improvements shall occur solely through the applicable City permitting and entitlement processes, and nothing in this Section shall be construed to limit or modify such regulatory discretion.

(b) Any material changes to the Schematic Design must be shared with the City, in its proprietary role and the HCIC for informational purposes and comment. If the unit count or unit mix substantially changes from the Schematic Design the City in its proprietary role and the HCIC must be informed right away and offered an opportunity to comment. Developer shall consider all input in good faith, but final design determinations shall be governed by the applicable permitting process.

(c) For purposes of this Section 2.3, a material change shall mean any change which is expected to (i) substantially alter the appearance of the Development (other than with respect to any planned public art), (ii) change the unit-mix or unit count, (iii) materially reduce the quality of

exterior materials, (iv) materially change the amenities of the Development.

(d) For ease of coordination on the infrastructure improvements, both parties must share their respective design plans in both PDF and AUTOCAD format throughout the design process. Developer must submit its plans to the City to review in its proprietary role prior to planning and permit submission.

(e) For the purposes of this Section, City and HCIC must respond in writing within ten (10) business days from receipt of any plans from the Developer. If no response is delivered within said timeframe, its deemed City and HCIC shall be deemed to approve the design and/or any design changes.

Section 2.4 Financing.

All financing necessary to construct the Improvements shall be closed by or committed to Developer prior to, or simultaneously with, the Closing Date. Developer shall also submit to the City evidence reasonably satisfactory to the City that any conditions to the release or expenditure of funds as the sources of funds to pay the costs of constructing the Improvements have been met or will be met upon the Closing Date and subject to Developer's satisfaction of standard disbursement preconditions required to be satisfied on a periodic basis, for constructing the Improvements. Submission by Developer, and approval by the City, of such evidence of funds availability shall be a condition precedent to the City's obligation to close on the Ground Lease.

Section 2.5 Completion Guaranty Agreement.

Prior to the commencement of construction, Developer shall provide City with a Completion Guaranty Agreement substantially in the form attached as Exhibit I and sufficient to provide assurances made by PacifiCap, Inc. as Guarantor on behalf of Developer, equivalent to a contractor's surety bond for payment of labor and materials and a performance and payment bond for construction of the Improvements and requiring, at the City's option the Guarantor to complete the Improvements at its own expense, or allow the City to complete the project at the Guarantor's expense. No work shall be initiated until the executed Completion Guaranty Agreement or other security has been received and approved by the City.

Section 2.6 Obtain all Applicable Governmental Approvals.

(a) Within the time set forth in the Schedule of Performance, Developer shall use commercially reasonable efforts to obtain all necessary land use and governmental approvals required for the construction and operation of the Improvements ("Applicable Governmental Approvals"), including but not limited to City review and approval of a site plan and building permits. Only upon delivery of evidence of issuance of all applicable Governmental Approvals to the City shall the conditions of this Section be deemed met. If such evidence is not delivered within the time set forth in the Schedule of Performance, this Agreement may be terminated in accordance with the terms of Article 7 (subject to any notice and cure periods set forth therein).

Section 2.7 Building Permits.

(a) No later than the date set forth in the Schedule of Performance, Developer shall apply for a building permit allowing for the construction of the Improvements. After submitting the application for a building permit, Developer shall diligently pursue and obtain a building permit for the Improvements, and no later than the date set forth in the Schedule of Performance, Developer shall deliver evidence to the City that Developer is entitled to issuance of a building permit for the Improvements upon payment of permit fees. The City shall render all reasonable assistance (at no cost to the City) to Developer to obtain the building permit.

(b) Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any required permits, applications, or allocations, and in no way limits the discretion of the City in the permit allocation and approval process for any the Improvements. However, City will use best efforts to expediently review and process building permit applications.

Section 2.8 Insurance.

Developer shall furnish to the City evidence of the builders risk insurance coverage meeting the requirements of Section 5.6 below, no later than the date set forth in the Schedule of Performance.

Section 2.9 Inspection of Property.

As of execution of this Agreement, Developer has made all such investigations regarding the Property, the suitability of the Property for development (including but not limited to investigation of environmental hazards, geologic conditions, soils conditions, or water conditions on or about the Property) as was required under the Exclusive Negotiating Agreement. The Developer did not submit an Unsuitability Notice (as defined in the Exclusive Negotiating Agreement) and is hereunder accepting title to the Property in an “as-is” condition as set forth in Section 3.6, hereof.

Section 2.10 Legal Lot.

The City will create a separate legal lot for the Property through a short plat process to create a separate unit of land which complies with all with all requirements of state and local law to be considered a legal lot capable of being separately ground leased. The City shall use commercially reasonable efforts to record the plat by the date set forth in the Schedule of Performance.

ARTICLE 3. DISPOSITION OF PROPERTY

Section 3.1 Conditions for Ground Lease.

Provided the pre-disposition requirements set forth in Article 2 have all been satisfied and the additional closing conditions set forth in Section 3.4 have been satisfied, the City shall ground

lease the Property to the Developer pursuant to the terms, covenants, and conditions of this Agreement.

Section 3.2 General Terms of Ground Lease.

(a) The term of the Ground Lease shall be ninety-nine (99) years commencing from the Closing Date.

(b) The annual Ground Lease rent shall be calculated by multiplying the appraised value of the Property by a cap rate of (5.7%) and discounted for the first forty (40) years of the lease term. As used in this Section 3.2, the “appraised value” means the as-restricted value set forth in the February 25, 2025 appraisal prepared on behalf of City by Colliers International Valuation & Advisory Services as increased annually by three percent (3%).

(c) Rent shall be abated for thirty (30) months from the Commencement Date (as defined in the Ground Lease) and discounted for the first forty (40) years of the term.

(d) Use of the Property subject to the Ground Lease shall be restricted to the Affordability Requirements and developed in accordance with the Schematic Design.

(e) At Closing, the Deposit shall be credited against the Rent in accordance with the ENA.

Section 3.3 Opening Escrow.

The Parties shall establish the Escrow with the Title Company. The Parties shall execute and deliver all written instructions to the Title Company to accomplish the terms hereof, which instructions shall be consistent with this Agreement. The Parties may submit their own escrow instructions to Title Company provided such instructions are consistent with the terms of this Agreement. Upon request by Developer, the Title Company may be changed to a company requested by Developer, provided: (a) Developer makes the request prior to the opening of escrow; and (b) the company is approved by the City.

Section 3.4 Closing.

The Closing Date shall occur within thirty (30) days following the date on which all conditions precedent to ground lease set forth in Article 2 have been satisfied, but in no event later than the date set forth in the Schedule of Performance, and only in the event that all conditions precedent set forth in Article 2 have been satisfied by the party required to perform or waived in writing by the other party as set forth herein.

(a) City Conditions to Closing. In addition to the conditions precedent to the Closing Date set forth in Article 2, the obligation of the City to ground lease the Property pursuant to this Agreement is subject to the satisfaction on or before the Closing Date (or such earlier date as is specifically set forth in this Agreement) of all of the following conditions precedent which conditions are for the benefit of the City only and the satisfaction of which may be waived only in

writing by the City:

(1) Developer shall have furnished the City with evidence of the insurance coverage meeting the general insurance requirements set forth in Section 5.6.

(2) Developer shall have obtained approval of the Construction Plans from the City.

(3) Developer shall have executed and delivered to the City, the Memorandum of Ground Lease, and any other documents and instruments required to be executed and delivered, all in a form and substance satisfactory to the City.

(4) Developer has obtained Governmental Approvals necessary for the construction allowing for the construction of the Improvements as required under Section 2.6 above; provided however the Developer may satisfy this requirement with regards to the building permit, if the Developer provides the City with a permit ready letter from the City Building Department.

(5) There shall exist no condition, event or act which would constitute a material breach or default under this Agreement.

(6) All representations and warranties of Developer contained in any part of this Agreement shall be true and correct in all material respects.

(b) Developer Conditions to Closing. The obligation of Developer to ground lease the Property pursuant to this Agreement is subject to the satisfaction on or before the Closing Date (or such earlier date as is specifically set forth in this Agreement) of all of the following conditions precedent which conditions are for the benefit of Developer only and the satisfaction of which may be waived only in writing by Developer:

(1) Delivery and execution by the City of all instruments and other items required to be delivered by City pursuant to this Agreement;

(2) City's warranties and representations set forth herein shall be true and correct as of the Closing Date;

(3) City shall have fulfilled each and every obligation to be performed by the City pursuant to this Agreement; and

(4) As of the Closing Date, the Title Company shall have issued or shall have committed to issue, upon the sole condition of the payment of its regularly scheduled premium, a Title Policy as set forth in Section 3.5.

Section 3.5 Condition of Title.

(a) On the Closing Date, the Title Company shall be prepared to issue to Developer an

ALTA extended coverage policy of title insurance and all endorsements required by Developer and its investors or lenders insuring Developer's ground leasehold interest to the Property (the "Title Policy"), which shall be free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except:

- (1) Applicable building and zoning laws and regulations;
- (2) Any provisions of the Heights District Plan;
- (3) The provisions of this Agreement;
- (4) Any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Memorandum of Ground Lease;
- (5) Exceptions as listed in the Property Preliminary Title Report that were approved or deemed approved by the Developer pursuant to the terms of the ENA, and Title Company shall be irrevocably committed to issue to the Developer an ALTA extended coverage owner's policy of title insurance conditioned only upon the payment of the insurance premium.

Section 3.6 Condition of Property.

(a) **"AS IS" TRANSACTION. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT TO THE CONTRARY, DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE CITY IS GROUND LEASING THE ENTIRE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE CITY AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER; (C) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE; (D) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY; (E) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY; AND (F) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE PROPERTY. DEVELOPER AFFIRMS THAT DEVELOPER HAS NOT RELIED ON**

THE SKILL OR JUDGMENT OF THE CITY OR ANY OF ITS RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE CITY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. DEVELOPER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

(b) Survival. The terms and conditions of this Section shall expressly survive the Closing Date. The City is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property, or any portion thereof, furnished by any contractor, agent, employee, servant or other person. Developer acknowledges that this as an "as is" transaction and any faults, liabilities, defects or other adverse matters that may be associated with the Property. Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with Developer's counsel and understands the significance and effect thereof.

(c) Acknowledgment. Developer acknowledges and agrees that: (1) to the extent required to be operative, the disclaimers of warranties contained in this Section are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements; and (2) the disclaimers and other agreements set forth herein are an integral part of this Agreement, that the City would not have agreed to ground lease the Property to Developer pursuant to this Agreement without the disclaimers and other agreements set forth in this Section.

(d) Developer's Release of the City. Developer, on behalf of itself and anyone claiming by, through or under Developer hereby waives its right to recover from and fully and irrevocably releases the City, its council members, board members, employees, officers, directors, representatives, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to any of the following, except as expressly set forth in this Agreement to the contrary or to the extent directly caused by the willful misconduct or gross negligence of the Released Parties: (1) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever; (2) any presence of Hazardous Materials; and (3) any information furnished by the

Released Parties under or in connection with this Agreement. Notwithstanding the generality of the foregoing, the foregoing waiver and release does not include any claims, responsibility, or liability to the extent related to the representations and warranties of City in this Agreement and in the Ground Lease.

(e) Scope of Release. The release set forth in this Section includes claims of which Developer is presently unaware or which Developer does not presently suspect to exist which, if known by Developer, would materially affect Developer's release of the Released Parties. Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, Developer agrees, represents and warrants that Developer realizes and acknowledges that factual matters now unknown to Developer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Developer nevertheless hereby intends to release, discharge and acquit the City from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses, except to the extent related to the representations and warranties of City in this Agreement and in the Ground Lease. Accordingly, Developer, on behalf of itself and anyone claiming by, through or under Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right Developer and anyone claiming by, through or under Developer, may have.

Section 3.7 Delivery upon Closing Date.

The City shall deliver possession of the Property to Developer upon the Closing Date free and clear of all tenants and other occupants.

ARTICLE 4. DEVELOPER CONSTRUCTION REQUIREMENTS AFTER CLOSING

Section 4.1 Construction Pursuant to Plans.

Unless modified by operation of Section 4.2, the Improvements shall be constructed substantially in accordance with the plans approved through the City's permitting process (the "Construction Plans") and the terms and conditions of the land use permits and approvals and building permits, including any variances granted. Any material changes to the Construction Plans that would affect the City's proprietary interests (e.g., affordability mix, unit count, or ground floor commercial use) shall be shared with the City for review and comment but shall not require separate approval outside of the standard City permitting process.

Section 4.2 Change in Construction of Improvements.

(a) If Developer desires to make any material change in the Improvements which are not substantially consistent with the Construction Plans, Developer shall submit the proposed change to the City and HCIC for its approval. No change which is required for compliance with building or zoning codes or other government health and safety regulations shall be deemed

material. If the Improvements, as modified by any such proposed change, will conform to the requirements of this Agreement, and the Construction Plans, the City shall approve the change by notifying Developer in writing. For purposes of this Section 4.2, a material change shall mean any change which is expected to (i) substantially alter the appearance of the Development, (ii) materially changes the unit-mix or unit count, (iii) materially reduces the quality of exterior materials, (iv) materially change the public amenities of the Development. Notwithstanding the foregoing, no change shall be deemed a “material change” if it is (A) required for compliance with building or zoning codes or other governmental health and safety regulations, (B) made in response to a requirement of a public or private lender, investor, or tax credit authority, or (C) a change in internal configurations, finishes, or systems that does not affect exterior appearance, unit count, or public amenities.

(b) Unless a proposed change is rejected by the City and HCIC within ten (10) working days (excluding City and other legal holidays), it shall be deemed approved. If rejected within such time period, the previously approved Construction Plans shall continue to remain in full force and effect. If accepted, the parties acknowledge that the Construction Plans shall be modified as necessary to reflect the accepted change to the Improvements. If the City rejects a proposed change, it shall provide Developer with specific reasons therefor and the Developer shall have the right to revise and resubmit its proposal to the City.

(c) The approval of changes in the Schematic Design and/or the Construction Plans by the City and HCIC pursuant to this Section shall be in addition to any approvals required to be obtained from the City pursuant to building permit requirements or the conditions of approval. Approval of changes in the Schematic Design and/or the Construction Plans by the City in its proprietary role shall not constitute approval of building permit requirements or conditions of approval by the City in its regulatory role and shall in no way limit the City’s discretion in approving changes to the building permits or conditions of approval.

Section 4.3 Commencement of Construction of Improvements.

Developer shall commence construction of the Improvements no later than the date set forth in the Schedule of Performance as such times may be extended in writing by the Parties and subject to any notice and cure provisions hereunder.

Section 4.4 Completion of Construction of Improvements.

Developer shall diligently prosecute to complete the construction of the Improvements no later than the date set forth in the Schedule of Performance as such times may be extended in writing by the Parties and subject to any notice and cure provisions hereunder and subject to Force Majeure as defined in Section 8.24.

Section 4.5 Equal Opportunity and Diverse Workforce Plan.

(a) During the construction and operation of the Development discrimination on the basis of race, color, creed, religion, age, sex, gender, gender identity, gender expression, sexual orientation, marital status, pregnancy, national origin, ancestry, military and veteran status, or

disability in the hiring, firing, promoting, or demoting of any person engaged in the construction or other work at the Property is not allowed.

(b) During the construction of the Development, Developer and the general contractor shall comply with all applicable nondiscrimination laws and policies, and shall create and implement a workforce and contracting plan that seeks to increase opportunities for Black Indigenous and People of Color (BIPOC) and women owned and small emerging businesses. The Developer and general contractor shall make good faith, commercially reasonable efforts to meet the following project-wide participation goals:

(1) General contractor must identify opportunities for smaller businesses and Disadvantaged Business Enterprises (DBEs).

(2) Where appropriate general contractor must create right sized bid packages to ensure accessibility for smaller businesses and DBEs.

(3) General contractor must conduct intentional outreach to BIPOC, women-owned and emerging small business firms prior to and through bidding process to offer equal opportunity.

(4) Minimum of 20% BIPOC, women owned, and emerging small businesses participation.

(5) Minimum of 15% apprenticeship participation.

The Developer shall collaborate with the City in connecting BIPOC, women owned and small emerging businesses using the City's local connections to ensure the above referenced goals are met. Failure to meet the goals shall not, by itself, constitute a default under this Agreement, provided that the Developer demonstrates reasonable, good faith efforts to implement the measures in this Section and reports participation data as required.

Section 4.6 Planned Public Improvements.

Pursuant to the Heights District Plan, the City intends to complete the Planned Public Improvements and coordinate such construction with the Developer as follows:

(a) City will provide a joint utility trench plan for location of all dry utilities and will coordinate the design of the joint utility trench with the Developer and Clark Public Utility District. City and Developer will collaborate on the design to ensure the Improvements' electrical needs are met. The City shall use best efforts to ensure that the Improvements' electrical and utility needs are met without imposing unreasonable additional costs or delays on the Developer.

(b) City plans to design and construct the undergrounding of overhead utility lines on the south side of E. Mill Plain Blvd and Devine Road south of E. Mill Plain Blvd and will seek reimbursement from Developer for their proportionate share of the costs in accordance with Section 4.9(d) below. Timing of this work is to be determined, and City will use its best efforts to

coordinate closely with Developer and will provide at least sixty (60) days advance written notice of the commencement of the work.

(c) City plans to design and construct improvements to the intersection of E. Mill Plain Blvd and Devine Road, including a new traffic signal, new paving, striping, bike and pedestrian facilities. The timing of these improvements is yet to be determined but the City will coordinate closely with the Developer and provide at least sixty (60) days advance written notice prior to commencement of the work.

(d) If any of the City's improvements described in this Section 4.6 and Section 4.9 (d) interfere with access to the Property or impact the operations of the Improvements or causes any damage to the Improvements, City shall reimburse Developer for any resulting, repair costs or other direct impacts, including costs, expenses or direct damages incurred by the Developer resulting from such damage, interference with access to the Property or adverse impact on the construction or operations of the Improvements.

Section 4.7 Compliance with Applicable Law; Prevailing Wage Requirement.

(a) Developer shall cause all construction to be performed in compliance with:

(1) All applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies in effect as of the Effective Date or that may be enacted hereafter, and

(2) All directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after the payment of all applicable fees, procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and Developer shall be responsible to the City for the procurement and maintenance thereof, as may be required of Developer and all entities engaged in work on the Property, or any portion thereof.

(b) Unless the Improvements will be paid for in whole or in part out of public funds secured by the Developer, the construction required under this Agreement does not constitute a "public work" as none of the Improvements will be paid for in whole or in part by the City and, except for the Frontage Improvements to be constructed by Developer and dedicated to the City, the Developer retains ownership of the Improvements. If and only to the extent the work performed under this Agreement is deemed a public work shall the provisions of this subsection (b) apply. If and only to the extent required by law, the Developer shall and shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Improvements as those wages are determined.

(1) The State of Washington applicable prevailing wage rates for this project, which is located in Clark County, may be found at the following website address of the Department of Labor and Industries:
<https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>.

(2) As applicable, Developer shall require that any construction contract include a requirement for the general contractor and each subcontractor to have on file current project specific “Statement of Intent to Pay Prevailing Wages” with the Washington State Department of Labor and Industries before payment will be made for work performed and require an approved “Affidavit of Wages Paid” form to be filed upon completion of the work performed.

(3) In case any dispute arises as to what the prevailing rates of wages for work of a similar nature are and such dispute cannot be resolved by the parties involved, the matter shall be referred to the director of the Department of Labor and Industries of the State of Washington for arbitration, and the L&I Director’s decision shall be final, conclusive, and binding on all parties involved in the dispute.

(c) Developer shall indemnify, hold harmless and defend (with counsel selected by Developer and reasonably approved by the City) the City Indemnitees against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Chapter 39.12 RCW. The provisions of this Section shall survive expiration of the Term or other termination of this Agreement and shall remain in full force and effect.

Section 4.8 Progress Report.

Until such time as Developer has completed construction, as evidenced by issuance of Certificates of Occupancy by the City for all buildings located on the Property, Developer shall provide the City with quarterly progress reports, or more frequent updates if City reasonably requires, regarding the status of the construction of the Improvements.

Section 4.9 Developer Construction Responsibilities.

(a) It shall be the responsibility of Developer to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with this Agreement.

(b) Developer shall be solely responsible for all aspects of Developer’s conduct in connection with the Development, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of construction work, and the performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and managers.

(c) As a condition of the Government Approvals, Developer will design and build interim frontage improvements along the Property’s E. Mill Plain Blvd and Devine Road frontages in the area between the existing and future right-of-way (“Frontage Improvements”) as shown in Exhibit G-3. The details of Frontage Improvements will be agreed to through the Governmental Approvals process.

(d) As a condition of Government Approvals, Developer will design and build, at Developer's sole expense (subject to the reimbursement and latecomer agreement provisions set forth in the Infrastructure Improvements Plan in Exhibit G-1), the offsite infrastructure improvements described in the Infrastructure Improvements Plan in Exhibit G-1 and Exhibit G-2. Developer shall not be responsible for constructing any infrastructure improvements beyond the limited scope detailed in Exhibit G-1. The City has designed an enhanced version of the Infrastructure Improvements Plan known as the Grand Loop as detailed in Exhibit F attached hereto. The term "Grand Loop" includes all right-of-way, water, sewer, stormwater, electrical utility improvements and a linear park with decorative and enhanced public realm features that abut the Property and provide access to, utilities and frontage improvements that serve the Property. Contingent upon receipt by the City of sufficient grant funding and in order to facilitate development of affordable housing as a permissible expenditure of public funds pursuant to Article 8, Section 7 of the Washington State Constitution, the City plans to construct the Grand Loop. City anticipates starting construction of the Grand Loop in Quarter 1 2027 and completion in Quarter 3 2028, but no later than December 31, 2028 and will instruct the contractor to prioritize the Grand Loop improvements adjacent to the Property. If the City constructs the Grand Loop as planned, the Developer will not be responsible for constructing the Infrastructure Improvements Plan and the City and Developer will coordinate closely on the construction of the Improvements and Grand Loop ensuring minimal conflicts between construction crews. If the City constructs the Grand Loop the City shall provide Developer with a written, detailed phasing schedule at least sixty (60) days prior to commencement of construction of the Grand Loop, ensuring that Developer's construction activities will not be materially impacted by City's improvements or conflicts between construction crews.

(e) Developer will reimburse the City for its proportionate share of costs related to undergrounding the utility lines along E. Mill Plain Blvd and Devine Road but shall be no more than \$95,000. Payment shall be made by check or in another form agreed to by the Parties and may be paid at the closing of the Ground Lease at Developer's choosing. If payment is made at closing of the Ground Lease, pursuant to RCW 82.02.020, the City will deposit the funds in an interest-bearing reserve account exclusively to fund the undergrounding capital improvement project. If the City has not expended the funds within five years of collection, the City will return the funds with interest to the Developer. The City will provide the Developer a cost estimate prior to the commencement of construction. If payment is not made at closing of the Ground Lease Developer shall reimburse City for its proportionate share of costs within thirty (30) days of receiving a formal, itemized invoice from City, which shall include:

- (i) A breakdown of all actual costs incurred;
- (ii) Developer's proportional share calculation; and
- (iii) Supporting documentation confirming total project costs.

If actual costs exceed the original estimate Developer shall have the right to review and approve any additional expenditures before being obligated to reimburse City.

(f) Any review or inspection undertaken by the City with reference to the Development is solely for the purpose of determining whether Developer is properly discharging its obligations to the City and should not be relied upon by Developer or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Development.

Section 4.10 Mechanic's Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Property, or any portion thereof, or the Improvements or a stop notice is issued affecting any portion of the Property, the City in connection with the Development, then Developer shall, within sixty (60) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the City a surety bond from a surety reasonably acceptable to the City in sufficient form and amount, or provide the City with other assurance reasonably satisfactory to the City that the claim of lien or stop notice will be paid or discharged. Provided, however, that Developer shall have the right to contest in good faith any such liens or stop notice.

(b) If Developer fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section or obtain a surety bond, then in addition to any other right or remedy, upon prior notice to Developer, the City may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at Developer's expense. Alternatively, the City may require Developer to immediately deposit with the City the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against Developer; provided, however, that Developer shall be permitted to exercise any rights of appeal of such adverse determination.

Section 4.11 Inspections.

Developer shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Property by the City and by public authorities during reasonable business hours upon forty-eight (48) hours' prior written notice for the purposes of determining compliance with this Agreement.

Section 4.12 Information.

Developer shall provide any information reasonably requested by the City in connection with the Development, provided that Developer shall not be required to disclose any proprietary, confidential, or privileged information. The Developer may condition any disclosure on appropriate confidentiality protections and shall not be obligated to provide information that is protected by applicable law, contractual confidentiality obligations, or that could compromise Developer's competitive position.

Section 4.13 Records.

(a) Developer shall maintain complete, accurate, and current records pertaining to the Development for a period of five (5) years after the creation of such records and shall permit any duly authorized representative of the City to inspect and copy records upon reasonable prior notice to Developer. Such records shall include all invoices, receipts, and other documents related to expenditures associated with the implementation of this Agreement. Records must be kept accurate and current.

(30) The City shall notify Developer of any records it deems insufficient. Developer shall have thirty (30) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the City in such notice, or if a period longer than thirty (30) days is reasonably necessary to correct the deficiency, then Developer shall begin to correct the deficiency within thirty (30) days and complete the correction of the deficiency as soon as reasonably possible.

Section 4.14 Notice of Completion.

(a) Promptly after completion of all of the Improvements on the Property in accordance with the provisions of this Agreement relating solely to the obligations of Developer to construct the Improvements the City shall provide an instrument so certifying the completion of the Improvements (the “Notice of Completion”).

(b) The Notice of Completion shall be conclusive determination that all covenants in this Agreement with respect to the obligations of Developer to construct the Improvements have been met. Issuance of a Notice of Completion by the City, however, shall not constitute evidence of compliance with Developers’ obligation to comply with the requirements of Section 4.9 and shall not terminate the obligations of Developer that survive the termination of this Agreement. The Notice of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust securing money loaned to finance the Improvements.

Section 4.15 Construction Coordination.

(a) Access; Interference. Developer shall comply in all material respects with all applicable City permitting and construction requirements related to street closures, construction disturbances, and the maintenance of access to neighboring facilities and businesses. The Parties shall coordinate in good faith on construction sequencing to avoid conflicts with the Planned Public Improvements. Nothing in this Section shall impose additional permitting or operational obligations on Developer beyond those required under applicable laws or permits.

(b) Construction Traffic. The Parties shall agree to a route for the construction truck traffic to utilize during construction.

(c) Construction Worker Parking. Developer shall provide a construction worker parking plan to City for review and approval (such approval not to be unreasonably withheld, conditioned, or delayed) prior to commencement of construction.

(d) Planned Public Improvements. City shall have the right to occupy and use an agreed-upon area located within the boundaries of Site C and around the perimeter of the Property as depicted within Exhibit J solely for the purposes of constructing the Planned Public Improvements and the Grand Loop (“Temporary Construction License Area”). The City’s access and use shall be strictly limited to the Temporary Construction License Area and the approved scope of work, and shall be conducted in a manner that does not unreasonably interfere with, delay, or increase the cost of the Developer’s construction, operations, or other activities on of the

Property. City shall be responsible, at its sole cost and expense, for repairing or restoring any portion of the Property (including landscaping, improvements, and utilities) disturbed or damaged by its activities to a condition equal to that existed immediately prior to entry, promptly upon completion of its work. The City will provide Developer with at least sixty (60) days advance written notice of the commencement of construction, which notice shall include a detailed schedule, scope of work, site logistics plan, and safety protocols. Prior to any entry, the parties shall meet and confer to coordinate activities, establish access and staging protocols, and agree on measures to avoid interference with the Improvements. The City shall indemnify, defend, and hold harmless the Developer, its affiliates, contractors, and lenders from and against any and all claims, losses, damages, costs, and liabilities (including reasonable attorneys' fees) arising out of or relating to the City's entry, occupancy, or work within the Temporary Construction License Area, except to the extent caused by the gross negligence or willful misconduct of Developer.

ARTICLE 5. ONGOING DEVELOPER OBLIGATIONS

Section 5.1 Applicability.

The conditions and obligations set forth in this Article 5 shall apply throughout the Term of this Agreement and the Ground Lease, unless a different period of applicability is specified for a particular condition or obligation.

Section 5.2 Use.

(a) Developer hereby agrees that, for the entire Term of this Agreement and the Ground Lease (unless the affordability restrictions are otherwise modified pursuant to the terms of the Ground Lease), the Development will be used only for commercial purposes and rent restricted housing serving households whose incomes at initial occupancy are at or below 80% AMI (the "Affordability Requirements").

Developer agrees that Developer will make a good faith attempt using commercially reasonable efforts to operate the market hall through an affiliate or to lease the market hall to a third-party operator who prioritizes and promotes BIPOC and local businesses and adheres to provisions in Exhibit H attached hereto and that any such operator shall endeavor to pay its employees working in the market hall a living wage; provided, that the foregoing shall not prevent Developer from leasing the market hall space to an operator of its choosing for use as a market hall. Notwithstanding the foregoing and for the avoidance of doubt, provided that Developer has made commercially reasonable efforts to operate the market hall substantially in compliance with the requirements set forth in Exhibit H attached hereto, including through an affiliate or by subleasing the market hall to a third-party operator, a failure to comply with the requirements set forth in Exhibit H shall not be a default or an event of default hereunder.

(b) Developer hereby agrees to provide ongoing community services through its non-profit partner, Latino Network, an Oregon nonprofit corporation, or other service provider or non-profit organization selected by the Developer which could include but is not limited to health and wellness, finance, art and culture, legal, employment, mentorship, and early childhood education.

The community services will be offered through on-site activities, workshops and community events; provided, that the foregoing shall not prevent Developer from engaging alternative service providers of its choosing and modifying the scope of ongoing community services to be provided throughout the term of this Agreement and the Ground Lease, and that no City approval of any such service provider or such scope of services shall be required. The Developer is responsible for paying for all costs associated with these ongoing community services.

(c) During the Term, the Developer shall not use any portion of the Property for any prohibited use set forth in the Ground Lease without the prior written consent of the City, which consent shall be granted or denied at the City's sole and absolute discretion.

(d) The use requirements set forth in this Section shall be expressly incorporated into the Ground Lease and shall survive termination of this Agreement.

Section 5.3 Compliance with Covenants.

Developer agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, of the Development in first-class condition, repair and sanitary condition (and, as to landscaping, in a healthy condition), and all applicable laws, rules, ordinances, orders, and regulations of all federal, state, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials. Following the Closing Date, Developer shall comply with all standards and requirements for use, operation, maintenance, management and encumbrances of the Property and the Improvements.

Section 5.4 Taxes and Assessments.

(a) Developer shall pay all real and personal property taxes (to the extent that the Property is not fully exempt from property taxes), assessments, including the Heights Business Improvement Area Assessments detailed below, charges and any income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to any portion of the Property; provided, however, that Developer shall have the right to contest in good faith any such taxes, assessments, or charges. In the event Developer exercises its right to contest any tax, assessment, or charge against it, Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

(b) The Property is subject to the Heights Businesses Improvement Area (Heights BIA) (per Vancouver Municipal Code (VMC) Section 3.50). Developer will be assessed annually to cover the supplemental service costs for the public spaces in the Heights District (as described in VMC 3.50.030). Assessments will not be charged until the Grand Loop or the civic plaza have been constructed and the Developer has executed the Ground Lease. This levy of assessment is made pursuant to VMC 3.50.040 to finance programs and services within the Heights District that are supplemental to services the City would ordinarily provide. Each property owner and ground lessee within the Heights Business Improvement Area will pay their proportionate share of the

assessments into the Heights Business Improvement Area Fund established pursuant to VMC 3.50.050. Collection of Heights BIA special assessments shall be made in accordance with VMC 3.50.060, commencing in the calendar year in which the construction of the Grand Loop or the civic plaza have been completed and the Developer and the City have executed the Ground Lease, and no sooner than January 1, 2028. Developer will be assessed annually and billed semi-annually in an amount in accordance with VMC 3.50.040 at the then-current rate in effect at the time but projected to be \$0.30 per one lot square feet with annual increases at 3% or per the Portland-Hillsboro-Vancouver Consumer Price Index, whichever is greatest. The City will establish a separate business improvement area entity who will administer the Heights BIA and who will function as the governing body. The Developer will enter into a separate agreement with the Heights BIA entity and such agreement will dictate the administration of the Heights BIA in a similar manner to the terms described in VMC 3.50.

Section 5.5 Hazardous Materials.

(a) Covenants.

(1) No Hazardous Materials Activities. Developer hereby represents and warrants to the City that, at all times from and after the Closing Date, Developer shall not cause or permit any portion of the Property or the Improvements thereon to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials except for Hazardous Materials typically used in the construction and operation of the Development in compliance with Hazard Material Laws.

(2) Hazardous Materials Laws. Developer hereby represents and warrants to the City that, at all times from and after the Closing Date, Developer shall comply and cause the Property and the Improvements thereon, to comply with all applicable Hazardous Materials Laws.

(3) Notices. Developer hereby represents and warrants to the City that, at all times from and after the Closing Date, Developer shall immediately notify the City in writing of: (A) the discovery of any Hazardous Materials on or under the Property, particularly associated with the discovery or any new release of Hazardous Materials on or under the Property, except for Hazardous Materials typically used in the construction and operation of the Development in compliance with Hazard Material Laws; (B) reserved; (C) any knowledge by Developer that the Property does not comply with any Hazardous Materials Laws; (D) any directives, corrective action orders, requests, claims or actions pending or threatened against Developer, the Property, the Improvements thereon, or the City by any Governmental Authorities or any third-party or entity relating to Hazardous Materials or pursuant to any Hazardous Materials Laws, or arising from claims of nuisance, or damage to property or personal injury relating to Hazardous Materials associated with the Property or the Improvements thereon (collectively “Hazardous Materials Claims”).

(4) Remedial Action. In response to the presence of any Hazardous Materials on, under or about the Property, or migrating from the Property, Developer shall

immediately take, at Developer's sole expense, all action to assess, investigate, remedy or remove the Hazardous Material, or take any action required by any Hazardous Materials Laws or to comply with any directives, or corrective action orders, requests, from any Governmental Authority, or to comply with any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials Claims.

(b) Indemnity. At all times from and after the Closing Date, Developer shall indemnify, defend, and hold the City Indemnitees, harmless from and against any and all losses, costs, claims, damages, liability, and judgments, including reasonable attorney's fees, with the counsel of City's choice, and costs incurred to hire environmental consultants incurred by or asserted against any Indemnified Party in connection with, arising out of, in response to, or in any manner relating to the violation of any Hazardous Materials Law, any Release, or threatened Release of Hazardous Materials, any condition of pollution, contamination or Hazardous Materials-related nuisance on, under or from the Property occurring after the Closing Date due to Developer's operations, or arising out of or in response to any Hazardous Materials Claims except as directly caused by the City's willful misconduct or gross negligence. Developer shall have no obligation to indemnify the City for any pre-existing Hazardous Materials present on, under, or from the Property prior to the Closing Date. This obligation to indemnify and defend the City Indemnitees contained in this shall survive termination of this Agreement.

At all times from and after the Closing Date, the City shall indemnify, defend, and hold the Developer, harmless from and against any and all losses, costs, claims, damages, liability, and judgments, including reasonable attorney's fees, with the counsel of Developer's choice, and costs incurred to hire environmental consultants incurred by or asserted against the Developer in connection with, arising out of, in response to, or in any manner relating to the violation of any Hazardous Materials Law, any Release, or threatened Release of Hazardous Materials, any condition of pollution, contamination or Hazardous Materials-related nuisance on, under or from the Adjacent Parcel, or arising out of or in response to any Hazardous Materials Claims. This obligation to indemnify and defend the Developer contained in this shall survive termination of this DDA.

(c) No Limitation. Developer hereby acknowledges and agrees that Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under subsection (b) above, are in no way limited or otherwise affected by any information the City may have concerning the Development and/or the presence within the Development of any Hazardous Materials, whether the City obtained such information from Developer or from its own investigations.

Section 5.6 Insurance Requirements.

(a) Builders Risk. Until final completion of construction of the Improvements, the construction is at the risk of Developer. Developer shall (or shall cause its general contractor to) purchase and maintain Builders Risk insurance upon the work at the site to the full insurable value until completion of construction of the Improvements. Said insurance will insure against the perils customarily insured against in such Builders Risk policies, including flood (if the Development is located within the 100-year flood plain) for physical loss and damage. The insurance shall include

damages, losses and expenses arising out of or resulting from any insured loss or incurred in the repair or replacement of any insured property.

(b) Property Insurance. Following completion of construction, Developer shall, at all times, maintain Cause of Loss – Special Form property insurance upon any buildings and facilities, including any permanent additions and improvements thereto, of which the Property form a part, in an amount equal to the full replacement cost thereof or with lesser limits as agreed by both City and Developer. Such insurance shall contain an agreed valuation provision in lieu of any co-insurance clause, an ordinance and law endorsement, debris removal coverage, business interruption coverage, extra expense coverage and a waiver of subrogation endorsement. Any and all payments from said policies or certificates of insurance, indemnity bonds and similar securities shall be made payable to and deposited with Developer or as required by its mortgagee(s). Further, and to the extent commercially available, all such policies shall contain a provision whereby the same cannot be canceled or modified unless City is given at least thirty (30) Days prior written notice of such cancellation or modification. Developer shall be responsible for the insurance premium and any deductible.

(c) Liability. Developer shall maintain, with financially sound and reputable insurers (see below), commercial general liability insurance written on an “occurrence” policy form with coverage at least as broad as ISO CGL form CG 0001, including contractual liability, against claims for bodily injury, property damage, and personal injury occurring on or about the Property or in any way relating to or arising out of Developer’s use or occupancy of the Property with minimum limits as provided in Section **Error! Reference source not found.** of the Ground Lease, which amount shall be consistent with commercially reasonable insurance standards but in no event shall be less than the Minimum Coverage Amount set forth in Section **Error! Reference source not found.** of the Ground Lease. Developer shall be named as an additional insured with coverage at least as broad as form ISO CG 2026 – Designated Person or Organization, without modification, affording coverage regardless of the additional insureds’ sole or concurrent negligence. Such insurance shall be endorsed to provide that the insurance shall be primary to and not contributory to any similar insurance carried by City and shall contain a severability of interest or cross liability clause.

(d) Business Interruption Insurance. Developer shall maintain business interruption insurance through the Term of the Ground Lease. Coverage will include payment to the City of the amount of annual Rent then payable to City for a period of at least six (6) months.

(e) Miscellaneous.

(1) Insurance Carrier Requirements. Developer’s insurance carrier(s), for all insurance referenced in the Ground Lease, shall be a reputable insurance company licensed to do business in the State of Washington. Developer’s insurance carrier(s) shall have a minimum A-VIII rating as determined by the then current edition of Best’s Insurance Reports published by A.M. Best Co.

(2) Certificates of Insurance. To establish that Developer’s insurance obligations have been met, Developer shall provide City with certificates of insurance prior to or at the Lease Term Commencement Date and renewals thereof prior to expiration of

existing policies. Certificates of insurance shall have a copy of additional insured endorsement in favor of Lessor attached and, to the extent commercially available, provide that the policies are not subject to cancellation or material change without at least thirty (30) Days advance written notice to City.

(3) Umbrella or Blanket Coverage. Developer shall be entitled to provide insurance coverage which it is obligated to carry pursuant to the terms of the Ground Lease under a blanket or umbrella insurance policy.

(4) Workers Comp and Employers Liability. At all times that Developer directly retains employees, Developer shall provide workers' compensation coverage, pursuant to statutory requirements. Developer further agrees to maintain Employers Liability Act ("ELA") or Stop Gap coverage as required by law of at least the Minimum Coverage Amount set forth in the Ground Lease.

(5) Automobile Liability. At all times that Developer owns at least one automobile, Developer shall provide Automobile Liability insurance with coverage at least as broad as Business Automobile Liability ISO form CA 0001, covering all owned, non-owned and hired automobiles brought on the Property, with coverage of at least the Minimum Coverage Amount set forth in the Ground Lease.

(6) Waiver of Subrogation. Notwithstanding anything in this Agreement to the contrary, neither party, nor its Related Parties is, nor, in case of Agreement, its assignees, shall be liable to the other party or to any insurance company (by way of subrogation or otherwise) insuring the other party, for any loss or damage to any building, structure or other property (whether real or personal) arising from any cause that (i) would be insured against under the terms of any property insurance required to be carried hereunder (or, with respect to City, which a reasonably prudent owner of real property similar in size, type, use, location, and quality as the Property would carry), or (ii) is insured against under the terms of any property insurance actually carried, regardless of whether the same is required hereunder, even though such loss or damage might have been occasioned by the negligence of such party or its Related Parties. Each party shall notify their respective insurance companies of this waiver of any rights of subrogation that such companies may have against Lessor or Lessee, as the case may be and shall obtain any necessary endorsement to avoid such waiver's invalidating the policy in whole or in part. Further, neither party nor the Related Parties shall be liable for: (1) any such damage caused by other lessees or persons in, upon or about the Property, or caused by operations in construction of any private, public or quasi-public work; or (2) consequential damages, including lost profits, of either party or any person claiming through or under Developer or City as applicable.

(7) Failure to Maintain. City shall have the right to force place any insurance required to be maintained by Developer hereunder if Developer fails to obtain same within thirty (30) Days of receipt of written notice of such failure, and the costs of such force placed insurance shall be an Additional Charge.

(f) City Insurance. City shall maintain in effect at all times insurance coverage consistent with the coverage customarily carried by ground lessors of property comparable in size, type, quality and location as the Property, including but not limited to (1) commercial general liability insurance with limits of no less than Ten Million and 00/100 Dollars (\$10,000,000) per occurrence and annual aggregate, which may be comprised of both primary and excess layers, and (2) pollution liability insurance with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per claim and Two Million and 00/100 Dollars (\$2,000,000.00) aggregate. Such insurance carriers shall have an A.M. Best rating of not less than “A-” and Financial Size Category Rating of not less than “VIII” according to the latest edition of Best’s Key Rating Guide. Notwithstanding the foregoing, City self-insures consistent with the parameters set forth in Schedule 5.6. So long as City complies with Schedule 5.6, City shall be deemed to comply with this section.

Section 5.7 Audits.

Upon five (5) business days’ prior written notice from the City, the Developer shall make available for examination at reasonable intervals and during normal business hours to the City all books, accounts, reports, files, and other papers or property with respect to all matters covered by this Agreement, and shall permit the City to audit, examine, and make excerpts or transcripts from such records. The City may make audits of any conditions relating to this Agreement. The City agrees to treat information obtained from the Developer during any audit with confidentiality, subject to the City’s legal obligations including under the Public Records Act. Disclosure of information by the City shall not be prohibited if that disclosure is of information that is or becomes a matter of public record or public knowledge as a result of the closing of the transaction or from sources other than the City or its agents, employees, contractors, consultants or attorneys.

ARTICLE 6. RESTRICTIONS ON ASSIGNMENT

Section 6.1 Permitted Assignment.

Developer is permitted to partially or wholly assign this Agreement, and the rights of Developer in connection therewith to a “Developer’s Affiliate” without the prior written consent of City, provided that Developer shall be afforded no consideration for such assignment and provided that Developer delivers written notice no later than ten (10) days prior to the effective date of such assignment, which notice shall provide reasonable evidence to City that the assignee is a “Developer Affiliate” as defined herein. For purposes of this section, “Developer’s Affiliate” means (a) any entity that directly or indirectly controls, is controlled by, or is under common control with Developer; or (b) any entity at least a majority of whose economic interest is owned by Developer, with the term “control” meaning the power to direct the day-to-day management of such entity through voting rights, ownership, or contractual obligations.

Section 6.2 Prohibited Assignment.

Except as otherwise provided in this Article, Developer shall not assign its rights under this Agreement without the prior written consent of City, which consent may be granted, denied

or conditioned in City's sole and absolute discretion. Notwithstanding the foregoing, no assignment or transfer shall relieve the assigning Party from its obligations under this Agreement unless expressly agreed to in writing by City.

ARTICLE 7. DEFAULT AND REMEDIES

Section 7.1 General Applicability.

The provisions of this Article shall govern the Parties' remedies for breach or failure of this Agreement.

Section 7.2 No Fault of Parties Prior to Closing.

(a) Developer, despite good faith and diligent efforts, is unable to satisfy all of the conditions precedent to the City's obligation to ground lease the Property as set forth in Article 2 by the dates set forth in the Schedule of Performance; or

(b) The City, despite good faith and diligent efforts, is unable to ground lease the Property to Developer by the dates set forth in the Schedule of Performance solely for reasons that could not have been foreseen, limited or avoided by the City and Developer is otherwise entitled to ground lease the Property.

(c) At the election of either party, this Agreement may be terminated by written notice to the other party. After termination, neither party shall have any rights against or liability to the other under this Agreement, except that the waiver and indemnification provisions of this Agreement that recite that they survive termination of the Term or of this Agreement shall survive such termination and remain in full force and effect.

(d) If Developer fails to secure funding by the date set forth in the Schedule of Performance the parties can agree to either extend the performance milestone dates in the Schedule of Performance allowing the Developer to secure funding through another funding cycle or can agree to terminate this Agreement. If the parties agree to the former, the Developer is awarded one more funding cycle for a total of two funding rounds to satisfy Section 2.4. If Developer fails to satisfy Section 2.4 on a second attempt, this Agreement may be terminated at the election of either party by written notice to the other party.

Section 7.3 Fault of City.

(a) Except as to events constituting a basis for termination under Section 7.2, the following events each constitute a City Event of Default (subject to any applicable notice and cure period) and a basis for Developer to take action against the City:

(1) The City, without good cause, fails to ground lease the Property to Developer within the time and in the manner set forth in this Agreement and Developer is otherwise entitled by this Agreement to such transaction; or

(2) The City breaches any other material provision of this Agreement.

(b) Upon the happening of any of the above-described events, Developer shall first notify the City in writing of its purported breach or failure, giving the City forty-five (45) days from receipt of such notice to cure or, if cure cannot be accomplished within forty-five (45) days, to commence to cure such breach, failure, or act. In the event the City does not then so cure within said forty-five (45) days, or if the breach or failure is of such a nature that it cannot be cured within forty-five (45) days, the City fails to commence to cure within such forty-five (45) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then Developer shall be afforded the following exclusive remedies and shall be entitled to a return of the Deposit:

(1) Terminating in writing this Agreement, however, that the waiver and indemnification provisions of this Agreement that recite that they survive termination of the Term or of this Agreement shall survive such termination and remain in full force and effect; or

(2) Prosecuting an action for specific performance.

Notwithstanding anything to the contrary set forth in this Agreement:

- (i) If all conditions precedent to the City's obligation to enter into the Ground Lease under Article 2 have been waived or satisfied and the City despite its good faith efforts and for reasons beyond its reasonable control, is unable to ground lease the Property to Developer, then, in lieu of any other remedies, the Developer shall be entitled to reimbursement from the City of its reasonable, documented, out-of-pocket costs and expenses directly incurred in connection with the Development, including without limitation permitting fees, application fees, design fees, and consultant costs associated with the design and permitting of the Development, to the extent actually paid by Developer prior to termination.
- (ii) If all such conditions have been waived or satisfied and the City, without good cause, willfully fails to ground lease the Property to Developer, and if the remedy of specific performance is not available to Developer as a practical matter (e.g., City has conveyed the Property to a third party), then Developer may pursue any remedies available at law and or in equity, including an award of monetary damages.

Section 7.4 Fault of Developer.

(a) Except as to events constituting a basis for termination under Section 7.2, the following events each constitute an Event of Default (subject to any applicable notice and cure period) and a basis for the City to take action against Developer:

(1) Developer fails to exercise good faith and diligent efforts to satisfy, within the time set forth in the Schedule of Performance and in the manner set forth in Article 2, one or more of the conditions precedent to the City's obligation to ground lease

the Property to Developer pursuant to this Agreement; or

(2) Developer has satisfied all preconditions set forth in this Agreement to commencement of construction of the Improvements by the Closing Date but refuses to close on the Ground Lease within the time periods and under the terms set forth in Article 3; or

(3) Developer constructs or attempts to construct the Improvements in violation of Article 4; or

(4) Developer upon execution of a Ground Lease abandons or suspends construction of the Improvements prior to completion of all construction for a period of sixty (60) days after written notice by the City of such abandonment or suspension; or forth in Article 4; or

(5) Developer fails to substantially comply with any obligation or requirement set forth in this Agreement; or

(6) A transfer or assignment of this Agreement or the rights of Developer in connection therewith occurs, either voluntarily or involuntarily, in violation of Article 6;

(7) Any representation or warranty contained in this Agreement (including those listed in Section 8.18) or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement proves to have been incorrect in any material and adverse respect when made; or

(8) A court having jurisdiction shall have made or entered any decree or order: (i) adjudging Developer to be bankrupt or insolvent; (ii) approving as properly filed petition seeking its reorganization of Developer or seeking any arrangement for Developer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction; (iii) appointing a receiver, trustee, liquidator, or assignee of Developer in bankruptcy or insolvency or for any of their properties; or (iv) directing the winding up or liquidation of Developer, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection (9) as well; or Developer has admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive; or

(9) Developer shall have been dissolved or shall have voluntarily suspended its business; or

(10) Developer breaches any other material provision of this Agreement and any applicable cure period for such breach shall have expired.

(b) Upon the happening of any of the above-described events, the City shall first notify Developer in writing of its purported breach, failure or act above described, giving Developer in writing forty-five (45) days from receipt of such notice to cure, or, if cure cannot be accomplished within said forty-five (45) days, to commence to cure such breach, failure, or act. In the event Developer fails to cure within said forty-five (45) days, or if such breach is of a nature that it cannot be cured within forty-five (45) days, Developer fails to commence to cure within said forty-five (45) days and diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the City shall be afforded all of its rights at law or in equity, including an award of monetary damages, and the right to exercise any or all of the following remedies:

(1) Termination of this Agreement by written notice to Developer; provided, however, that the City's remedies pursuant to this Article 7 or any other City Document and the waiver and indemnification provisions of this Agreement that recite that they survive termination of the Term or of this Agreement shall survive such termination and remain in full force and effect;

(2) Prosecuting an action for damages or specific performance; and

(3) If the uncured default occurs prior to the issuance of a Certificate of Occupancy for the Improvements, exercising the City's rights under the Completion Guaranty Agreement; it being understood that the remedies secured by the Completion Guaranty Agreement will automatically terminate after the issuance of a Certificate of Occupancy for the Improvements.

Section 7.9 Remedies Cumulative.

No right, power, or remedy given by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise. Neither the failure nor any delay to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 7.10 Waiver of Terms and Conditions.

No waiver of any default or breach by Developer hereunder shall be implied from any omission by the City to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by the City to or of any act by Developer requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right,

power, or remedy shall in no event constitute a cure or a waiver of any default under this Agreement nor shall it invalidate any act done pursuant to notice of default, or prejudice the City in the exercise of any right, power, or remedy hereunder or under this Agreement, unless in the exercise of any such right, power, or remedy all obligations of Developer to City are paid and discharged in full.

Section 7.11 Assignment of Plans.

If this Agreement is terminated pursuant to Section 7.2 or Section 7.4 and City requests copies of plans, specifications and/or third party reports obtained in connection with the Development, (collectively, the “Section 7.11 Documents”), Developer shall promptly deliver to the City, within ten (10) days of City’s request, copies of the requested Section 7.11 Documents but only upon full reimbursement by the City of the costs incurred by Developer in connection with the preparation, acquisition, and development of the requested Section 7.11 Documents. To the maximum extent permitted under such documents or any applicable security instrument, the delivery of the Section 7.11 Documents shall be accompanied by an assignment in the form of an assignment agreement approved by the City, of Developer’s right, title and interest in the Section 7.11 Documents; provided however, that that such documents shall be delivered strictly on an “AS-IS” basis, without representation or warranty of any kind, express or implied, as to their accuracy, completeness, validity, quality, or fitness for any particular purpose and any use of the Section 7.11 Documents by the City or any other person shall be without liability of any kind to Developer, its consultants or its employees as to the quality, validity, or usability of the Section 7.11 Documents.

Section 7.12 No Consequential Damages.

Notwithstanding anything to the contrary elsewhere in this agreement or provided for under any applicable law, neither City or Developer shall, in any event, be liable to the other party, either in contract, tort or otherwise, for any consequential, incidental, indirect, special or punitive damages from such other person, including loss of future revenue, income or profits, diminution of value or loss of business reputation or opportunity relating to the default or alleged breach hereof, whether or not the possibility of such damages has been disclosed to the other party in advance or could have been reasonably foreseen by such other party.

ARTICLE 8. GENERAL PROVISIONS

Section 8.1 Notices, Demands and Communications.

Formal notices, demands, and communications between the City and Developer shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail/return receipt, or delivered personally, to the principal offices of the City and Developer as follows:

CITY:

City of Vancouver

PO Box 1995
Vancouver, WA 98668-1995
ATTN: Patrick Quinton, Economic Prosperity & Housing Director
Email: Patrick.Quinton@cityofvancouver.us

WITH A COPY TO:
City of Vancouver
PO Box 1995
Vancouver, WA 98668-1995
ATTN: Becky Rude, Deputy City Attorney
Email: Becky.Rude@cityofvancouver.us

DEVELOPER:

Palindrome Properties Group, LLC
412 NW 5th Avenue, Suite 200
Portland, OR 97209
ATTN: Heather Boyd, Vice President
Email: hboyd@palindromecreates.com

WITH A COPY TO:

Kantor Taylor PC
1200 Fifth Avenue, Suite 1910
Seattle, WA 98101
ATTN: Mike Decina
Email: mdecina@kantortaylor.com

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section 8.1. No party shall evade or refuse delivery of any notice.

Section 8.2 No Personal Liability.

No member, official, employee or agent of the City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Developer or successor or on any obligation under the terms of this Agreement.

No partner, director, employee or agent of the Developer shall be personally liable to City, or any successor in interest, in the event of any default or breach by the Developer or for any amount which may become due to City or successor or on any obligation under the terms of this Agreement.

Section 8.3 Conflict of Interest.

No member, official, employee or agent of the City shall make any decision relating to this Agreement which affects their personal interests or the interest of any corporation, partnership, association in which they are directly or indirectly interested in.

Section 8.4 Enforced Delay.

In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; protests, strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of god; acts of the public enemy; epidemics or pandemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Agreement); weather or soils conditions which, in the opinion of Developer's contractor, will necessitate delays; inability to secure necessary labor, materials or tools; acts of the other party; acts or failure to act of any public or governmental agency or entity (other than the acts or failure to act of the City); or any other causes (other than Developer's inability to obtain financing for the Improvements) beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within fifteen (15) days from the date the party seeking the extension first discovered the cause and such extension of time is not rejected in writing by the other party within fifteen (15) days of receipt of the notice. Times of performance under this Agreement may also be extended in writing by the City and Developer. In no event shall the cumulative delays exceed one hundred eighty (180) days, unless otherwise agreed to by the Parties in writing.

Section 8.5 Inspection of Books and Records.

Upon request, Developer shall permit the City to inspect at reasonable times during business hours and on a confidential basis those books, records and all other documents of Developer necessary to determine Developer's compliance with the terms of this Agreement. Developer also has the right at all reasonable times during business hours to inspect the public books, records and all other documentation of the City pertaining to its obligations under this Agreement.

Section 8.6 Title of Parts and Sections.

Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

Section 8.7 General Indemnification.

Each Party (the "Indemnifying Party") agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the other Party) the Other Party (the "Indemnified Party"), from all suits, actions, claims, causes of action, administrative proceedings, arbitrations, enforcement actions, costs, demands, judgments and liens arising out of Indemnifying Party's

performance or non-performance under this Agreement, or any other agreement executed pursuant to this Agreement, or arising out of acts or omissions of any of Indemnifying Party's contractors, subcontractors, or persons claiming under any of the aforesaid, except to the extent directly caused by the Indemnified Party's willful misconduct or gross negligence or breach of this Agreement. The provisions of this Section shall survive expiration of the Term or other termination of this Agreement and shall remain in full force and effect.

Section 8.8 Applicable Law.

This Agreement shall be interpreted under and pursuant to the laws of the State of Washington.

Section 8.9 Venue.

In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the venue for such action shall be the Superior Court of the County of Clark, or where otherwise appropriate, exclusively in the United States District Court, Western District of Washington

Section 8.10 No Brokers.

The City represents that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee except as agreed to in writing by the City and Developer. Developer represents, warrants, and agrees that it has not engaged or otherwise had dealings regarding the Property with a real estate broker that Developer is obligated to pay any real estate commission in connection with the transactions contemplated by this Agreement. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, Developer shall indemnify, defend with counsel of the City's choice, and hold the City harmless from all expense, loss, damage and claims, including the City's attorneys' fees, if necessary, arising out of the broker's or finder's claim, except as directly cause by the City's willful misconduct or gross negligence. The provisions of this Section shall survive expiration of the Term or other termination of this Agreement and shall remain in full force and effect.

Section 8.11 Severability.

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 8.12 Binding Upon Successors.

(a) This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the parties hereto except

that there shall be no transfer of any interest by any of the parties hereto except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

(b) The covenants and restrictions set forth in this Agreement shall run with the land and shall bind all successors in title to the Property. However, on the termination of this Agreement, such covenants and restrictions shall expire. Each and every contract, deed, or other instrument hereafter executed covering any portion of the Property shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed, or other instrument, unless the City expressly releases any portion of the Property from the requirements of this Agreement.

Section 8.13 Independent Parties; No Joint Venture.

Nothing in this Agreement is intended to or does establish the parties as partners, a joint venture, or principal and agent with one another.

Section 8.14 No Third-Party Beneficiaries.

No person or entity other than the City, Developer, and their permitted successors and assigns shall have any right of action under this Agreement

Section 8.15 Time of the Essence.

In all matters under this Agreement, the parties agree that time is of the essence.

Section 8.16 Action by the City.

Except as may be otherwise specifically provided in this Agreement or any another City Documents, whenever any approval, notice, direction, finding, consent, request, waiver, or other action by the City is required or permitted under this Agreement or any other City Documents, such action may be given, made, or taken by the City Manager, or by any person who shall have been designated in writing to Developer by the City Manager, without further approval by the City Council. Any such action shall be in writing in a form approved by the City Attorney.

Section 8.17 Discretion Retained by City.

The City's execution of this Agreement does not constitute approval by the City and in no way limits the discretion of the City in the permit and approval process in connection with development of the Improvements.

Section 8.18 Representations and Warranties.

(a) Developer Representations and Warranties. Developer hereby represents

and warrants to the City as follows as of the Effective Date and throughout the Term, unless otherwise specified below:

(1) Organization. Developer is a duly formed, validly existing limited partnership, and is in good standing under the laws of the State of Washington and has the power and authority to own its property and carry on its business as now being conducted.

(2) Authority of Developer. Developer has full power and authority to execute and deliver this Agreement, and all other documents and instruments to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(3) Authority of Persons Executing Documents. This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Developer, and all actions required under Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(4) Valid Binding Agreements. This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Developer enforceable against it in accordance with their respective terms.

(5) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on Developer, or any provision of the organizational documents of Developer, or will conflict with or constitute a breach of or a default under any agreement to which Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of Developer, other than liens permitted or established pursuant hereto.

(6) Compliance with Laws; Consents and Approvals. The construction of the Improvements will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(7) Pending Proceedings. Developer is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and

there are no claims, actions, suits or proceedings pending or, to the knowledge of Developer, threatened against or affecting Developer, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Developer, materially affect Developer's ability to develop and operate the Improvements as required under this Agreement.

(8) Financial Statements. The financial statements of Developer and other financial data and information furnished by Developer to the City fairly present the information contained therein. As of the date of this Agreement, there has not been any adverse, material change in the financial condition of Developer from that shown by such financial statements and other data and information.

(9) Sufficient Funds. As of the Closing Date, the Developer holds sufficient funds or binding commitments for sufficient funds to enter into the Ground Lease and complete the construction of the Improvements on the Property in accordance with this Agreement.

(10) No Reliance on Planned Public Improvements. Developer is entering into this Agreement for the purpose of constructing the Improvements and accessing the Ground Lease and is not relying on the City being required to deliver the Planned Public Improvements as a condition of Developer's performance hereunder, subject to the reimbursement and latecomer agreement provisions set forth in the Infrastructure Improvements Plan in Exhibit G-1. The Infrastructure Improvements Plan allows the Developer to complete the Improvements irrespective of the Planned Public Improvements.

(b) City's Representations and Warranties. City represents and warrants to Developer as follows:

(1) That this Agreement constitutes the valid and binding obligation of City and, upon approval by the Vancouver City Council, is enforceable against City in accordance with its terms, subject to bankruptcy, insolvency and similar laws affecting the enforcement of creditors' rights generally and general equitable principles.

(2) City is a Washington first-class charter city, validly formed and duly established as a Washington municipal corporation under the laws of the State of Washington.

(3) Pursuant to approval by the Vancouver City Council, City has full power and authority to enter into and perform this Agreement.

(4) The execution and delivery of this Agreement, delivery of money and all required documents, City's performance of this Agreement and the transaction contemplated hereby have been duly authorized by the requisite action on the part of City.

(5) Neither the execution nor delivery of this Agreement, nor the

transaction contemplated by this Agreement will, to City's knowledge, conflict in any material respect or constitute a breach under any agreement or instrument by which City or the Property is bound.

(6) Except as disclosed in writing to Developer at or before Closing on Schedule 8.18(b)(6) (the "Litigation Disclosure") attached hereto, there are no pending actions, suits, arbitrations, claims or proceedings, at law or in equity, including without limitation, any action or proceeding for condemnation, affecting the Property or in which City is, or, to the best of City's knowledge, will be, a party by reason of City's ownership of the Property.

Section 8.19 Complete Understanding of the Parties.

This Agreement and the attached exhibits constitute the entire understanding and agreement of the parties with respect to the matters set forth in this Agreement.

Section 8.20 Entry by the City.

Developer shall permit the City, through its officers, agents, or employees, at all reasonable times during business hours, and upon at least 48 hours prior written notice to Developer, to enter into the Development: (a) to inspect the work of construction to determine that the same is in conformity with the requirements of this Agreement; and (b) following completion of construction and subject to the rights of tenants under their leases and any applicable landlord tenant laws, including without limitation rights of tenants to receive prior written notice with respect to inspection of residential units, to inspect the ongoing operation and management of the Development to determine that the same is in conformance with the requirements of this Agreement. Developer reserves the right to have a representative of Developer accompany City during any inspection by City. Developer acknowledges that the City is under no obligation to supervise, inspect, or inform Developer of the progress of construction, or operations and Developer shall therefore not rely upon the City for that purpose. Any inspection by the City during the construction is entirely for its purposes in determining whether Developer is in compliance with this Agreement and is not for the purpose of determining or informing Developer of the quality or suitability of construction. Developer shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers.

Section 8.21 Amendments.

The Parties can amend this Agreement only by means of a writing executed by all Parties.

Section 8.22 Implementation Agreements.

The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Agreement. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of

performance for those items covered in general terms under this Agreement. If and when, from time to time, the Parties find that mutually acceptable refinements or adjustments are desirable, such refinements or adjustments shall be accomplished through operating memoranda or implementation agreements approved by the Parties which, after execution shall be attached to this Agreement as addenda and become a part hereof. Operating memoranda or implementation agreements may be executed on the City's behalf by the City Manager, or the City Manager's designee. In the event a particular subject requires notice or hearing, such notice or hearing shall be appropriately given. Notwithstanding the foregoing, nothing in this Section shall be deemed to require the City to consider any request by Developer for a waiver of any particular obligation as set forth herein.

Section 8.23 Multiple Originals; Counterparts.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 8.24 Force Majeure.

If, after the Effective Date of this Agreement, either Party is prevented or delayed from performing any act or discharging any obligation under this Agreement, excluding any monetary obligations, when and to the extent such failure or delay is caused by or results from acts beyond either Party's reasonable control, including pandemics, epidemics or similar global infection outbreaks; fire, flood, earthquake or explosion; strikes or labor disputes; materials or equipment embargoes or blockades; acts of God; war, invasion, or hostile government actions; civil commotion or other casualty; legal actions attacking the validity of this Agreement, the City's authority to develop the Property, or the Developer's occupancy of the Property, or any other similar casualties beyond the reasonable control of the Party affected, except casualties directly or indirectly resulting from the acts or omissions of that Party ("Force Majeure"), the Party impacted shall be excused from performance of the act for the period of the delay, and the period for performance of the act shall be extended for a period equivalent to the period of the delay. If the party claiming excuse or delay of performance by Force Majeure fails to notify the other party and provide appropriate evidence of such qualifying event within thirty (30) days of commencement of the Force Majeure event, that party shall not be exempted from its liability for failure of performance or complete performance, or the necessity of delay in fulfilling its obligations. The party affected by Force Majeure shall make reasonable efforts to reduce the consequences of the Force Majeure and resume the performance of all relevant obligations as soon as possible after the termination of Force Majeure. If the party affected by Force Majeure fails to resume performance of the relevant obligations after the reasons for the temporary exemption from performance of the obligations due to Force Majeure cease, such party shall be liable to the other party in this regard.

[Remainder of Page Intentionally Blank; Signatures Follow]

IN WITNESS WHEREOF, the City and Developer have executed this Agreement in triplicate on or as of the Effective Date.

DEVELOPER:

Palindrome Heights Limited Partnership, a Washington limited partnership

By: Palindrome Heights Manager, LLC, a Washington limited liability company
Its General Partner

By: _____
By: Chad I. Rennaker, President

STATE OF WASHINGTON)
) ss.
County of Clark)

On this ____ day of _____, 2025, before me personally appeared Chad I. Rennaker, to me known to be the President Palindrome Heights Manager, LLC, a Washington limited liability company, as the General Partner of Palindrome Heights Limited Partnership, a Washington limited partnership, which has executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signature of Notary Public)

(Printed Name of Notary Public)

(Place of Residence of Notary Public)

(notary seal or stamp)

My Commission Expires: _____

CITY:

CITY OF VANCOUVER, WASHINGTON,
a Washington municipal corporation

By: _____

By: Lon Pluckhahn, City Manager

ATTEST:

By: _____

By: Natasha Ramras, City Clerk (or Designee)

APPROVED AS TO FORM:

By: _____

By: Nena Cook, City Attorney

STATE OF WASHINGTON)
) ss.
County of Clark)

On this _____ day of _____, 2025, before me personally appeared Lon Pluckhahn, to me known to be the City Manager of the City of Vancouver, a Washington municipal corporation, which has executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signature of Notary Public)

(Printed Name of Notary Public)

(Place of Residence of Notary Public)

(notary seal or stamp)

My Commission Expires: _____

EXHIBIT A-1

MAP OF SITE

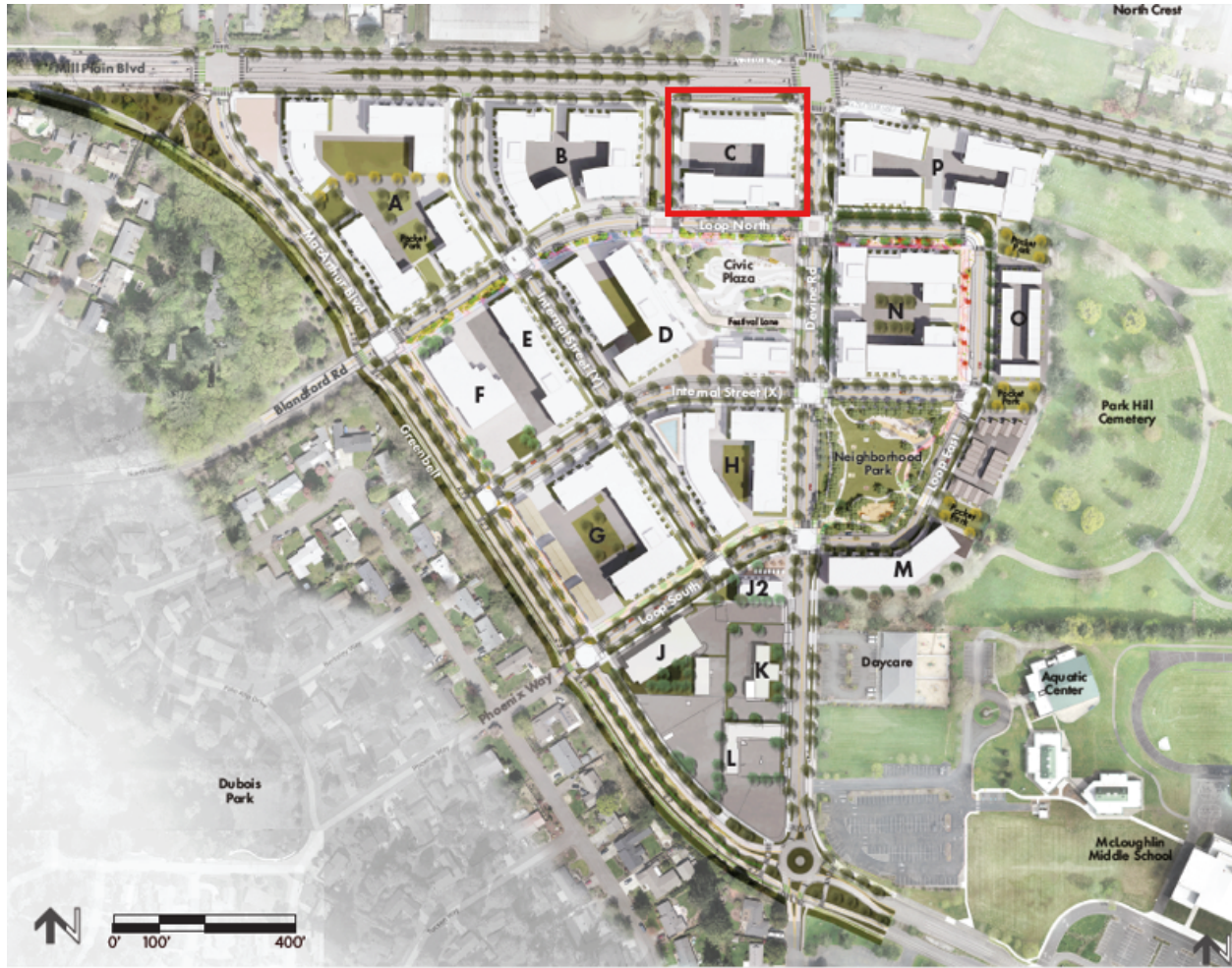


EXHIBIT A-2

LEGAL DESCRIPTION OF THE PROPERTY



City of Vancouver Property Description
Parcel "C"
Legal Description

Being a portion of that tract of land conveyed to the City of Vancouver as described in Auditor's File Number 5419742, Clark County Deed Records, and being a portion of the John Nye Donation Land Claim located in the Southwest one-quarter of Section 30, Township 2 North, Range 2 East of the Willamette Meridian, City of Vancouver, Clark County, Washington and being more particularly described as follows:

COMMENCING FROM the Northeast corner of Lot 3 of that Short Plat recorded in Book 2, Page 243, Short Plat Records of Clark County, Washington;

Thence North 01°30'02" East, along the westerly right-of-way line of Devine Road, 519.07 feet to a point on the Easterly line (also being the westerly right-of-way line of Devine Road) of said parcel described in Auditor's File Number 5419742;

Thence North 88°29'58" West, leaving said Easterly line, 12.50 feet to the **TRUE POINT OF BEGINNING** of the herein described property;

Thence North 88°29'58" West, along a proposed right-of-way line, 253.36 feet to an angle point;

Thence North 01°10'07" East, continuing along said proposed right-of-way line, 218.40 feet to an angle point, said point being 14.50 feet southerly of when measured perpendicular to the Southerly right-of-way line of E. Mill Plain Boulevard;

Thence South 88°49'53" East, continuing along said proposed right-of-way line (said line being 14.50 feet Southerly of and parallel with the Southerly right-of-way line of E. Mill Plain Boulevard), 219.90 feet to the beginning of an 1868.50 feet radius curve to the right;

Thence continuing along said proposed right-of-way line and the arc of said 1868.50-foot radius curve to the right, through a central angle of 00°43'43" (the chord of which bears South 88°28'01" East, 23.76 feet) an arc distance of 23.76 feet to a point of non-tangency;

Thence South 49°38'05" East, continuing along said proposed right-of-way line, 14.09 feet to an angle point, said point being 12.50 feet westerly of when measured perpendicular to the Westerly right-of-way line of Devine Road;

Thence South 01°30'02" West, continuing along said proposed right-of-way line (said line being 11.50 feet Westerly of and parallel with the Westerly right-of-way line of Devine Road), 210.82 feet to the **TRUE POINT OF BEGINNING** of the herein described property;

Contains in all 55,608 square feet, more or less.

Together with and/or subject to easements of record as applicable.

See Exhibit Map attached hereto



DRAWN BY: RFS	SCALE: 1"=100'	1.19.24
CHECKED BY: TLG	JOB NO.: 71595.000	SHEET 1 OF 1

EXHIBIT B

SCHEDULE OF PERFORMANCE¹

Milestone	Date
Land Use Approval	March 31, 2026
Permit Application	September 1, 2026
Permit Approval	November 1, 2026
Award of Funding	November 30, 2026
Closing Date	By or before January 31, 2027
Issuance of Certificate of Insurance	By or before February 28, 2027
Plat Recordation	By or before November 1, 2026
Commencement of Construction of Improvements	By or before February 28, 2027
Completion of Construction of Improvements	September 30, 2028

¹ Dates can be extended by 12-months pursuant to section 7.2(d).

EXHIBIT C

SUMMARY OF SOURCES AND USES

[TO BE INSERTED]

EXHIBIT D

FORM OF MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Vancouver

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

MEMORANDUM OF LAND DISPOSITION AND DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT (the "Memorandum") is made as of [DATE], by and between the City of Vancouver, Washington, a Washington municipal corporation, and [ENTITY NAME] [ENTITY STATE AND TYPE]. The parties entered into that certain Land Disposition and Development Agreement, dated as of [DATE], as such may be amended from time to time (the "Agreement").

The Agreement imposes certain conditions (including but not limited to, construction requirements, operating and use restrictions and covenants, and transfer restrictions) on the real property described in Exhibit A attached hereto and incorporated herein (the "Property"). The Agreement is a public document and may be reviewed at the office of the City Clerk.

This Memorandum shall incorporate herein all of the terms and provisions of the Agreement as though fully set forth herein. This Memorandum is solely for recording purposes, and shall not be construed to alter, modify, amend or supplement the Agreement, of which this is a memorandum.

This Memorandum may be executed in counterparts, each of which shall be deemed an original.

[Remainder of Page Intentionally Blank; Signatures Follow]

IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed as of the date first above written.

DEVELOPER:

[ENTITY] [ENTITY STATE AND TYPE],

By: _____
[NAME/TITLE]

CITY:

CITY OF VANCOUVER, WASHINGTON,
a Washington municipal corporation

By: _____
By: Lon Pluckhahn, City Manager

ATTEST:

By: _____
By: Natasha Ramras, City Clerk (or Designee)

APPROVED AS TO FORM (CITY ATTORNEY'S OFFICE:

By: _____
Name: _____
Title: _____

[SIGNATURES MUST BE NOTARIZED]

**MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT
EXHIBIT A – LEGAL DESCRIPTION OF THE PROPERTY**

The land is situated in the City of Vancouver, County of Clark, State of Washington, and is described as follows:

[TO BE INSERTED]

EXHIBIT E PLANNED PUBLIC IMPROVEMENTS



EXHIBIT F

GRAND LOOP PLAN

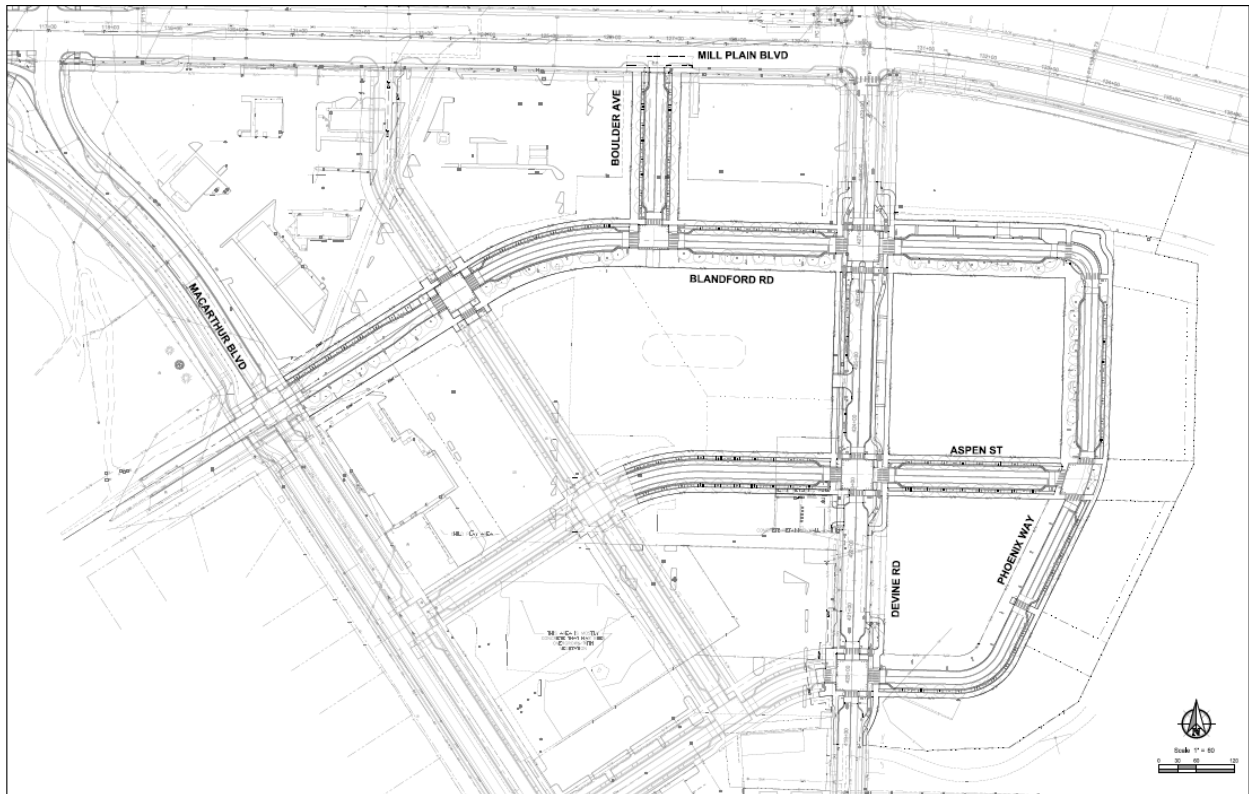


EXHIBIT G-1

INFRASTRUCTURE IMPROVEMENTS PLAN

This Infrastructure Improvements Plan sets forth the conditions and parameters under which Developer is required to undertake the design and construction of certain infrastructure improvements adjacent to and necessary for the development of Site C (“Infrastructure Work”). Subject to securing the federal RAISE grant funding, the City plans to construct the Infrastructure Work on behalf of the Developer to facilitate the development of affordable housing as detailed in Section 4.9(d).

1. Trigger for Implementation.

The City will keep the Developer updated on all progress related to the federal RAISE grant but if by September 1, 2026 the City has not secured the RAISE grant funds and/or uncertainty remains on when the City can complete the Grand Loop improvements the City must provide written notice to the Developer of such and Developer must implement this Infrastructure Plan. If such notice is not provided, or if the City confirms that it will proceed with the Grand Loop on a timeline consistent with Site C’s schedule, this Infrastructure Improvements Plan shall not apply.

2. Scope of Infrastructure Work., The Developer is responsible for designing and constructing the following Infrastructure Work:

- Installation of wet and dry utility connections, including water, sewer, stormwater, power, and telecommunications, sufficient to serve Site C;
- Full street improvements on Blandford Drive along Site C's boundaries up to the curb on the other side of the street;
- Full street improvements on Boulder Lane up to the curb on the other side of the street adjacent to Site B;
- Temporary intersection improvements at Blandford Drive and Devine Road and Blandford Drive and Boulder Lane as shown in black cross-hatched in Exhibit G-2.

3. Standard of Completion.

The Infrastructure Work shall be constructed to City standards and subject to City inspection and approval and need not include decorative or enhanced public realm elements (e.g., decorative lighting, special paving, or complete Grand Loop features).

4. City Support and Coordination.

The City shall coordinate closely with Developer on permitting, inspections, and utility coordination. The City shall provide all necessary rights of entry, permits, and access to public rights-of-way under its control as well as copies of the City’s design standards to enable Developer to complete the Infrastructure Work.

5. Reimbursement And Latecomers Agreement

Developer and City will enter into a latecomers agreement to document the reimbursement of Developer's costs associated with the construction of the half street improvements up to the curb on the south side of Blandford Drive and west side of Boulder Lane as shown in red hatched in Exhibit G-2. Developer will be reimbursed for those half street improvement costs by the developer of the adjacent lot benefitting from the Infrastructure Work upon commencement of construction of the adjacent sites; provided, that with respect to the construction of the half street improvements up to the curb on the south side of Blandford Drive, Developer will be reimbursed for those half street improvement costs by the City upon commencement of construction by the City of the plaza on the adjacent site to the south benefitting from the Infrastructure Work.

6. No Obligation for Enhanced Improvements.

Developer shall not be responsible for the cost or construction of the City's Grand Loop improvements with the enhanced features exceeding the scope outlined in this Exhibit G-1. Any future enhancements desired by the City shall be constructed and funded by the City.

EXHIBIT G-2

DEPICTION OF INFRASTRUCTURE IMPROVEMENTS PLAN

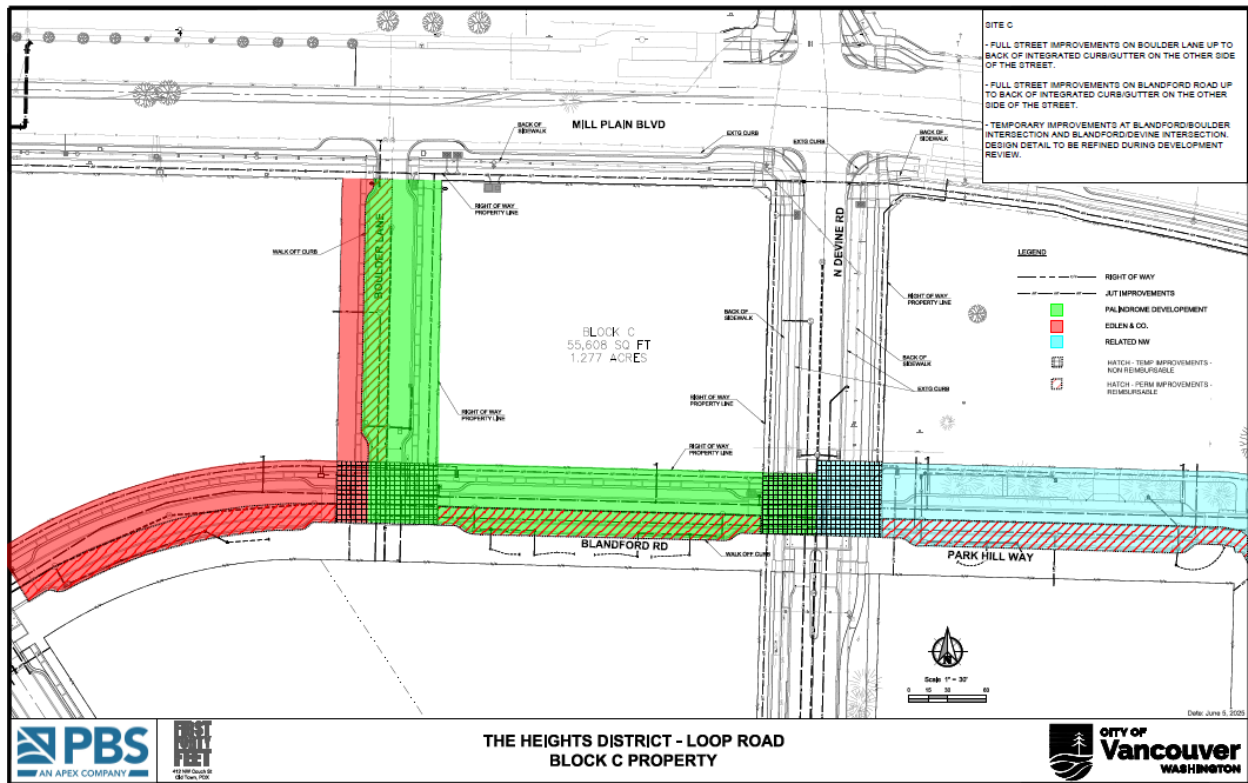


EXHIBIT G-3

FRONTAGE IMPROVEMENTS

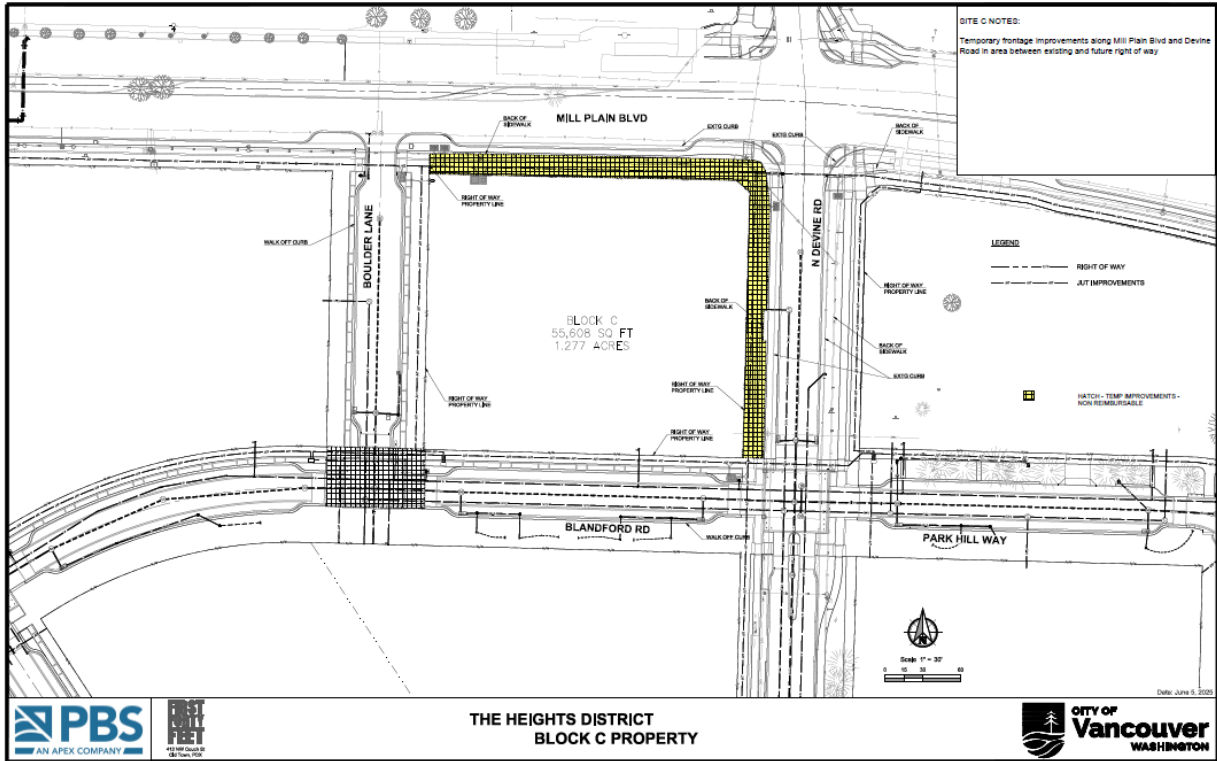


EXHIBIT H

MARKET HALL LEASING REQUIRMENTS

The mission of the Market Hall is to promote the inclusion of and provide opportunities for local and minority owned businesses. While the Developer owns and manages the Improvements, Developer will make a good faith commercially reasonable effort to operate (or to cause a subtenant to operate) the commercial space as a market hall in substantial compliance with the requirements set forth in this Exhibit H and will not be in default under Section 7.4 of this Agreement if it fails to meet these requirements despite using commercially reasonable efforts. If the Development Agreement and/or the Ground Lease is assigned to a third-party that's not an affiliate of the Developer, the provisions of this Exhibit H shall not apply.

Tenant Eligibility Criteria

- At least 51% of the micro tenants must be from Vancouver. For the purposes of this agreement, "from Vancouver" is defined as a business that has a majority owner that lives within the City of Vancouver.
- Tenants must embrace the current and growing cultural diversity of the city. At least 51% of the micro tenants must be businesses owned (50% or more), by a socially and economically disadvantaged U.S. citizen or legal resident who belongs to one or more of the following categories: African American/Black, Hispanic, Asian Pacific, Subcontinent Asian, Native, women or any other historically underserved or excluded group.

Marketing/Tenanting

Developer agrees to collaborate with the City and/or a Vancouver community-based organization(s) that supports small businesses from historically underserved or excluded communities in recruiting tenants of the micro units. The Developer and the community-based organization will collaborate on a process for outreach, marketing, and working with prospective tenants to lease the commercial spaces.

Design

The Market Hall will be initially designed and constructed with the following elements.

- Micro spaces with a minimum of 10 units.
- Shared facilities, including but not limited to bathrooms, storage, some level of refrigeration and dishwashers.
- Beyond a warm shell condition, including but not limited to a painted unit with all essential services like HVAC, lighting and plumbing installed. For micro-restaurant spaces only, grease traps and hoods will be installed for micro-restaurant use.

Lease Terms

All leases will have a flat rental fee with an additional common area charge to provide services that benefit the tenant.

EXHIBIT I

FORM OF COMPLETION GUARANTY AGREEMENT

This **COMPLETION GUARANTY** (“**Guaranty**”) is given as of _____, by **PacifiCap, Inc.**, a Nevada corporation (“**PacifiCap**” or “**Guarantor**”) to and for the benefit of the **City of Vancouver**, a Washington municipal corporation (“**City**”).

R E C I T A L S:

A. The Guarantor has agreed to execute and deliver this Guaranty to the City in connection with that certain Land Disposition and Development Agreement (the “**DDA**”) dated as of _____, and executed by and between the City and Palindrome Heights Limited Partnership, a Washington limited partnership (“**Owner**”), pursuant to which the City will transfer certain real property generally located at 5411 E. Mill Plain Blvd, Vancouver, WA, known as Site C (the “**Property**”) to the Owner to develop, construct and operate a mixed-use multifamily housing development, including the Improvements defined in the DDA (collectively, the “**Project**”).

B. The City has relied on the obligations of the Guarantor to be performed under this Guaranty and the Guarantor has determined that executing and delivering this Guaranty is in the Guarantor’s interest and to the financial benefit of the Guarantor.

C. The Guarantor acknowledges that the City is the intended beneficiary of this Guaranty and that this Guaranty is a condition of the City’s conveyance of the Property to the Owner pursuant to a ground lease for the development of the Project.

D. Initially capitalized words that are used but not otherwise defined herein shall have the meanings given them in the DDA.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby irrevocably and unconditionally promises, covenants, guarantees, and agrees as follows:

1. Term and Obligations.

- a. The Guarantor does hereby unconditionally and irrevocably guarantee the due and punctual performance of all obligations of the Owner with respect to the timely completion of the construction of the Project substantially in accordance with the Construction Plans and the terms of the DDA in a good and workmanlike manner, without substantial deviation therefrom unless approved by the City in writing, free of construction or similar liens (“**Guaranteed Obligations**”). This Guaranty is a continuing guaranty of performance throughout the term stated in Section 1(c). The Guarantor unconditionally agrees that if for any reason it fails to perform the Guaranteed Obligations, then upon written demand by the City the Guarantor will take corrective actions to perform such obligations and further guarantees the satisfaction of any financial and other obligations necessary.

- b. If Guarantor does not perform such responsibilities and obligations as described herein on or before the times such matters are to be completed by the Owner under the DDA, or if, prior to the expiration of the time limits for construction completion set forth in the DDA, construction of the Project should cease or be halted prior to completion and the cessation or halt constitutes an uncured Event of Default under the DDA, the City may then elect to take any actions it reasonably believes necessary to complete the construction of the Project in accordance with the Construction Plans, but with the further right to suspend or terminate such actions at any time. No such actions by the City will release or limit the liability of the Guarantor hereunder. In such event the Guarantor shall repay the City any amounts reasonably expended by the City in undertaking any actions it reasonably believes necessary to perform the Guaranteed Obligations, together with interest on all amounts expended at the rate of eight percent (8%) per annum from the date of expenditure, and all reasonable expenses actually incurred in enforcing this Guaranty, including but not limited to attorneys' fees and any expenses incurred in connection with any trial, appeal, arbitration, or bankruptcy proceedings. Such obligation of reimbursement is in addition to Guarantor's obligations under other provisions of this Guaranty ("**Repayment Obligation**").
- c. This Guaranty shall automatically expire upon the issuance of the final certificate of occupancy issued by the City, or comparable City sign-off, on the completion of construction of the Project.

2. Provisions of Guaranty

- a. If the Guarantor fails to perform any of its obligations under this Guaranty, the Guarantor shall be responsible for any and all damages resulting to the City from such breach.
- b. This is a guarantee of performance and not of collection. The Guarantor waives any right to require that any action be brought against any other person (including the Owner) liable for performance or payment of any obligations or that resort first be made to any other security.
- c. Prior to filing an action against the Guarantor, the City will give the Guarantor a reasonable period of notice with an opportunity to cure any failure to perform as required, which shall be at least 30 days except in case of emergency. If the Guarantor fails to pay any amount owing under this Guaranty, the City shall have all of the rights and remedies provided by law, the DDA or under any other agreement relating to the Project. These rights and remedies shall be cumulative and not exclusive.

3. Nature of Guaranty. The Guarantor's liability for performance of the Guaranteed Obligations and payment of the Repayment Obligation guaranteed hereunder shall be a primary obligation and shall be absolute and unconditional. The Guarantor agrees that none of the following acts, omissions, or occurrences shall diminish or impair the liability of the Guarantor in any respect (all of which acts, omissions, or occurrences may be done or occur without notice to the Guarantor):

- a. Any extension, modification, indulgence, compromise, settlement or variation of any of the terms of the Guaranteed Obligations or Repayment Obligation;

- b. The discharge or release of any obligations of any Guarantor or any other person now or hereafter liable on the Guaranteed Obligations or Repayment Obligation, by reason of bankruptcy or insolvency laws or otherwise;
- c. The acceptance or release by the City of any collateral, security, or other guaranty or any settlement, compromise, or extension with respect to any collateral, security, or other guaranty;
- d. The application or allocation by the City of payments, collections, or credits on the Repayment Obligation;
- e. The creation of any new indebtedness by Owner;
- f. The making of a demand, or absence of demand, for payment of the amounts owing under the Guaranty, or giving, or failing to give, any notice of dishonor, protest, presentment, or non-payment or any other notice;
- g. Any failure, omission, or delay on the part of the Guarantor or any other person now or hereafter liable on the Guaranteed Obligations or Repayment Obligation, or anyone claiming by or through any of them, to comply with any instrument or agreement relating to any of the Guaranteed Obligations or Repayment Obligation;
- h. To the extent permitted by law, any release or discharge by operation of law of the Guarantor from the performance or observance of any obligation, covenant, or agreement contained in this Guaranty;
- i. Any merger or consolidation of the Guarantor, or any other person now or hereafter liable on the Guaranteed Obligations or Repayment Obligation, into or with any other corporation or other entity or any sale, lease, or transfer of any of the assets of the Guarantor to any other person or entity; or
- j. Any other occurrence or circumstance (other than payment hereunder) which might otherwise constitute a legal or equitable defense or discharge of the liabilities of a Guarantor or surety or which might otherwise limit recourse against the Guarantor.

The obligations of the Guarantor set forth in this Guaranty constitute full recourse obligations of the Guarantor, enforceable against the Guarantor to the full extent of the Guarantor's assets and properties. The Guarantor's liability under this Guaranty is independent of the Guarantor's liability under any other guaranty previously or subsequently executed by the Guarantor as to all or any part of the Guaranteed Obligations or the Repayment Obligation and may be enforced for the full amount of this Guaranty regardless of the Guarantor's liability under any other guaranty.

4. Sufficient Consideration. The Guarantor acknowledges that the Guarantor has received good, valuable, and sufficient consideration for the making of this Guaranty and expressly agrees that recourse may be had against the Guarantor's properties and assets for all obligations hereunder and further agree that any and all of the Guarantor's properties and assets shall be subject to execution for a judgment rendered against the Guarantor on this Guaranty by a court of competent jurisdiction.

5. Waiver of Rights. The Guarantor agrees to waive:

- a. Notice of acceptance of this Guaranty;
- b. Any and all other notices to which the Guarantor might otherwise be entitled except as this document requires;

- c. Any and all defenses arising by reason of any disability of the Guarantor or any defense of any other person;
- d. Any and all rights to extension, composition, or election with respect to any collateral under any provision of the Federal Bankruptcy Code, as now existing or hereafter amended from time to time, or any other debtor's or guarantor's remedy thereunder or under any other federal or state law affecting creditors' rights;
- e. Diligence in any attempt to enforce the obligations guaranteed under this Guaranty, to realize upon any other security, or to collect from anyone any amount, the payment of which is guaranteed under this Guaranty, and any right to require that any action be brought against any other person or to require that resort first be had to any such security;
- f. Protection of any such security for the payment of the obligations guaranteed under this Guaranty;
- g. The observance of any and all formalities that might otherwise be required to charge any Guarantor with liability under this Guaranty;
- h. Any right of subrogation to the rights of the City against Owner; and
- i. Any notice or demand, any action that the City takes regarding Owner, anyone else, any collateral, or any Guaranteed Obligations or Repayment Obligation, which the Guarantor might be entitled to by law or under any other agreement.

The City may waive or delay enforcing any of its rights without losing those rights.

6. Representations and Warranties. The Guarantor represents and warrants to the City as follows:

- a. The execution and delivery of this Guaranty, and the performance of the obligations imposed under this Guaranty, do not violate any law and do not conflict with any agreement by which the Guarantor is bound, and no consent or approval of any governmental authority or any third party is required in connection with the execution or delivery of this Guaranty and the performance of the obligations imposed under this Guaranty, and this Guaranty is a valid and binding agreement, enforceable according to its terms.
- b. There are no actions, suits or proceedings, and no proceedings before any arbitrator or by or before any governmental commission, board, bureau or other administrative agency, pending or, to the best knowledge of the Guarantor, threatened against or affecting the Guarantor, or any properties or rights of the Guarantor, which, if adversely determined, could have a materially adverse effect upon the financial condition of the Guarantor that would materially impair the Guarantor's ability to perform its obligations under this Guaranty.
- c. The Guarantor assumes full responsibility for obtaining any further information concerning the status of the Guaranteed Obligations or Repayment Obligation or any other matter which the Guarantor may deem necessary or appropriate (now or later). The Guarantor waives any duty on the part of the City, and agrees that the Guarantor is not relying upon nor expecting the City to disclose to the Guarantor any fact now or later known by the City, whether relating to the operations or condition of Owner as owner of the Project, the existence or the occurrence of any default with respect to the Guaranteed Obligations or Repayment Obligation, or otherwise, notwithstanding any effect such fact may have upon the undersigned's risk under this Guaranty.

- d. The Guarantor is satisfied with the means that the Guarantor has for obtaining from Owner, on a continuing basis, financial and other information pertaining to its condition as owner of the Project.

7. Reinstatement. This Guaranty shall continue to be effective, or shall be automatically reinstated, as the case may be, if at any time performance or payment of all or any part of the Guaranteed Obligations or Repayment Obligation, as the case may be, is rescinded or must otherwise be restored or returned by the City upon the insolvency, bankruptcy, dissolution, liquidation, or reorganization of Owner, or upon, or as a result of, the appointment of a custodian, receiver, trustee, or other officer with similar powers with respect to Owner or any substantial part of Owner's property, or for any other reason, all as though such payments had not been made. If an event permitting the acceleration of any of the Guaranteed Obligations or Repayment Obligation shall at any time have occurred and be continuing and such acceleration of the obligations shall at such time be prevented by reason of the pendency against Owner of a case or proceeding under a bankruptcy or insolvency law, the Guarantor agrees that, for purposes of this Guaranty and the Guarantor's obligations under this Guaranty, the Guaranteed Obligations or Repayment Obligation shall be deemed to have been declared in default and accelerated with the same effect as if the obligations had been declared in default and accelerated in accordance with the terms thereof, and the Guarantor shall immediately pay the amounts specified by the City to be paid in accordance with the documents evidencing the Guaranteed Obligations or Repayment Obligation.

8. Notice. Formal notices, demands, and communications between the City and Guarantor shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail/return receipt, or delivered personally, to the principal offices of the City and Guarantor as follows:

GUARANTOR:

PacifiCap, Inc.
2360 East Cheyenne
North Las Vegas, NV, 89030
ATTN: Rebecca Velarde

CITY:

City of Vancouver
PO Box 1995
Vancouver, WA 98668-1995
ATTN: Patrick Quinton, Economic Development & Housing Director
Email: Patrick.Quinton@cityofvancouver.us

WITH A COPY TO:

City of Vancouver
PO Box 1995
Vancouver, WA 98668-1995
ATTN: Becky Rude, Deputy City Attorney
Email: Becky.Rude@cityofvancouver.us

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section 8. No party shall evade or refuse delivery of any notice.

9. Miscellaneous.

- a. This Guaranty shall be construed and interpreted in accordance with Washington law. In the event of legal action resulting from a dispute hereunder, the parties agree that the State and federal courts of the State of Washington shall have jurisdiction and that the proper forum for such action shall be the Superior Court for Clark County or the United States District Court for the Western District of Washington respectively.
- b. This Guaranty shall be binding on the successors and assigns, legal representatives, and other transferees of the Guarantor. This Guaranty shall not be assignable or transferable by the Guarantor without the prior written consent of the City. This Guaranty shall inure to the benefit of the City's successors, assigns, and legal representatives.
- c. Any amendment of this Guaranty shall be in writing and shall require the signature of the Guarantor and the City.
- d. The invalidity or unenforceability of any provision of this Guaranty shall not affect the validity or enforceability of the remaining provisions of this Guaranty.
- e. Any reference in this Guaranty to attorneys' fees shall refer to reasonable attorneys' fees, charges, costs, and expenses of in-house and outside attorneys and paralegals, whether or not a suit or proceeding is instituted, and whether incurred at the trial court level, on appeal, in a bankruptcy, administrative, or probate proceeding, in consultation with counsel, or otherwise.
- f. The descriptive headings of this Guaranty are for convenience only and shall not be deemed to affect the meaning of any provision.
- g. As used herein, the term "person" includes a human being, a public or private corporation, an unincorporated association or organization, a partnership or any other for-profit or non-profit entity.
- h. Whenever the context so requires, the masculine includes the feminine and neuter, the singular includes the plural, and the plural includes the singular.

10. WAIVER OF JURY TRIAL. THE GUARANTOR ACKNOWLEDGES THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. THE GUARANTOR, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF CHOICE, KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO,

THIS GUARANTY.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be duly executed as
of the
date noted above.

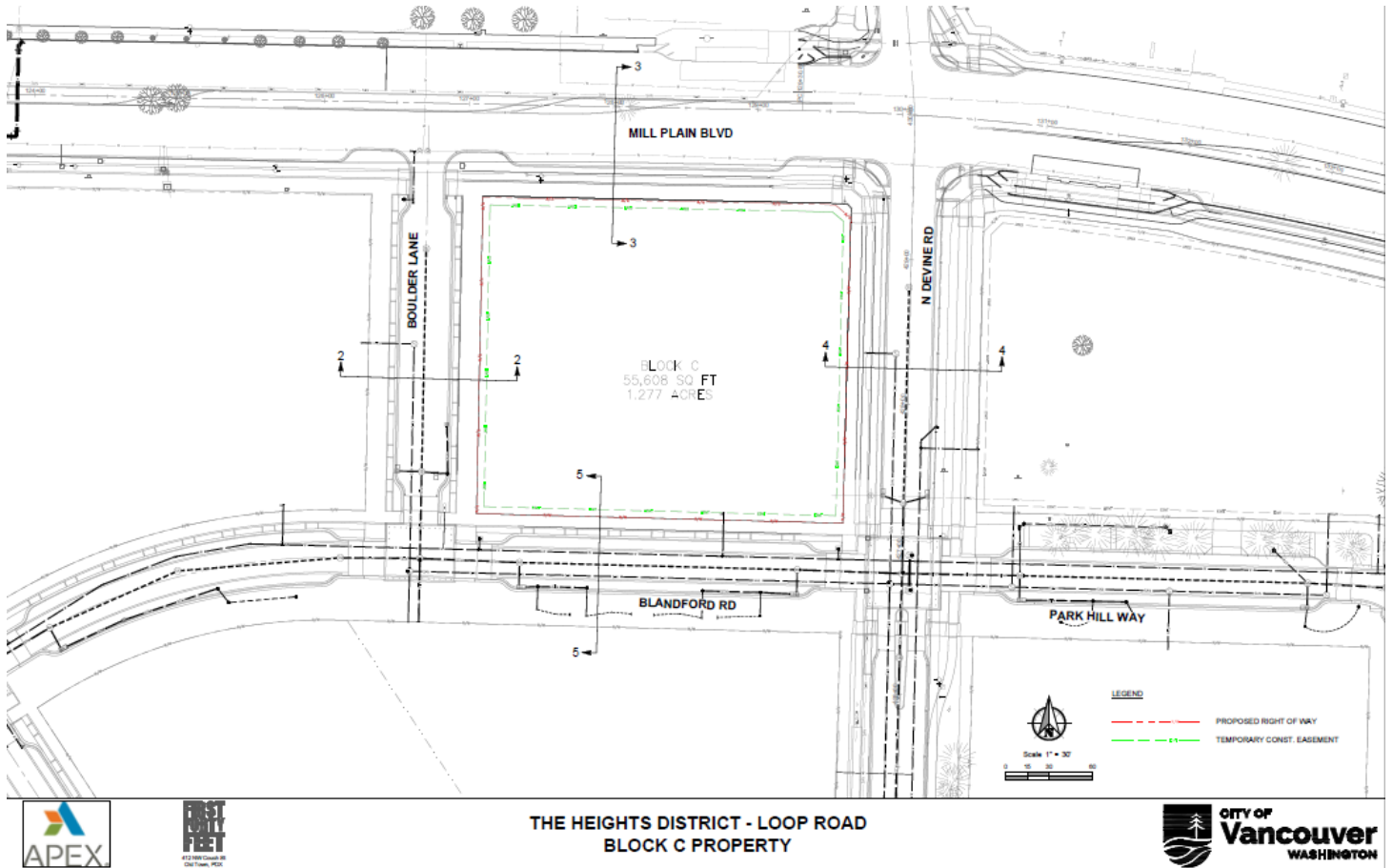
PACIFICAP:

PacifiCap, Inc., a Nevada corporation

By: _____
Name: Chad I. Rennaker
Title: President

EXHIBIT J

TEMPORARY CONSTRUCTION LICENSE AREA DEPICTION



SCHEDULE 5.6

CITY SELF-INSURANCE CERTIFICATION LETTER



Risk and Safety Department

Re: Certification of Self-Insurance
To Whom It May Concern:

Please allow this letter to confirm the City of Vancouver is currently self-insured up to One Million Dollars (\$1,000,000 SIR) for bodily injury and/or property damage to third parties for accidents stemming from City operations. Additionally, the City purchases excess liability coverage beyond the \$1M SIR totaling Twenty Million Dollars (\$20,000,000). The current policy term is 10/1/2024 through 9/30/2025.

The City of Vancouver also carries an Inland Marine auto policy. Our current policy maintains limited liability of \$10,000,000 for City owned equipment and \$250,000 for leased or rented equipment. Our current auto policy is written by AGCS Marine Insurance Company, policy number MXL93045147.

Furthermore, this letter is also to serve as confirmation that the City of Vancouver is currently self-insured up to Two Million Dollars (\$2,000,000 SIR) for Workers' Compensation. Additionally, the City purchases excess Workers' Compensation coverage beyond the \$2M SIR.

If additional information is required, please contact the undersigned at brent.waddle@cityofvancouver.us.

Regards,

A handwritten signature in black ink, appearing to read "Brent Waddle".

Brent Waddle
Risk and Safety Manager

P.O. Box 1995 | Vancouver, WA 98668-1995 | 360-487-8000 | TTY: 711 | cityofvancouver.us

SCHEDULE 8.18(B)(6)

LITIGATION DISCLOSURE

[TO BE UPDATED BY CITY AT CLOSING]

A RESOLUTION relating to the approval of a disposition and development agreement between the City of Vancouver and Vancouver Heights Family Development Co., LLC; establishing the terms and conditions under which the Heights District Site P lot will be developed and ground leased by the City to Vancouver Heights Family Development Co., LLC; and authorizing the City Manager to execute the disposition and development agreement.

Staff Report: 203-25

To: Mayor and City Council
From: City Manager
Date: October 6, 2025

Subject

Heights Site P Family Building Disposition and Development Agreement

Key Points

- City staff request City Council to adopt the attached resolution to approve the Disposition and Development Agreement between the City of Vancouver and Vancouver Heights Family Development Co., LLC for the development of part of Site P in the Heights District.
- In August 2024, following a public review process led by the Heights Community Investment Committee, Related/Northwest Development LLC and Vancouver Housing Authority were selected as the preferred developer for Site P.
- The project is located at E. Mill Plain Boulevard and Devine Road adjacent to Park Hill Cemetery and consists of a mixed-use building with 80 affordable housing units and community serving commercial space.
- The terms of the Disposition and Development Agreement have been agreed to, which are outlined below, and subject to City Council's approval.

Strategic Plan Alignment

Housing and Human Needs – meeting basic needs and partnering with organizations to support the community

Vibrant and Distinct Neighborhoods – a variety of accessible places and spaces

Present Situation

In March 2024, the City and the Heights Community Investment Committee (HCIC) issued a Request for Proposals (RFP) for the first three development sites in the Heights District located along E. Mill Plain Boulevard and Devine Road, known as Sites B, C and P. After two months of deliberation, the HCIC selected Related/Northwest Development LLC and Vancouver Housing Authority's (VHA) proposal for Site P in August 2024. The proposed project included 131-units of affordable housing across two buildings – one 80-unit building for families with household incomes at 50-60% of the Area Median Income and one 51-unit building for seniors with household incomes at 30-60% of the Area Median Income. The City entered into an Exclusive Negotiation Agreement (ENA) with Related/Northwest Development LLC and VHA that set forth that the parties will negotiate the terms of Disposition and Development Agreements (DDAs) for Site P's development. The site will be subdivided into two lots, one for each building, and the development of each building will be governed

by a separate development agreement and ground leases. Due to funding constraints, the development and construction of Site P will focus first on the family housing building. The terms of the family housing DDA have been negotiated, which are outlined in this staff report, and subject to City Council review. Staff will return to City Council for action on the senior housing development agreement by early 2026.

Vancouver Heights Family Development Co., LLC, a single purpose entity with Related Northwest/Development LLC and VHA as members of the company, will co-develop and co-own the building. They will partner with a local non-profit, EngAGE NW, to deliver onsite resident services and a variety of onsite activities and programs tailored to community needs. The development team includes Hacker Architects, Emerio Design, GLI Advisors and Essex Construction. The buildings will be managed by Quantum Residential.

The family housing project will include the following:

- 80 housing units restricted to households earning 30% to 60% of the Area Median Income (AMI). Unit types range from studios to 1-3 bedrooms.
- Onsite resident services and activities provided by local non-profit, EngAGE NW, tailored to community needs.

The substantive terms of the DDA are as follows:

- The property will be ground leased for 99 years with the ground lease projected to begin in Q3 2027 at the beginning of construction. The ground lease terms are outlined below. City staff will return to City Council for review of the ground lease in Q4 2026.
- The developer is obligated to meet key project milestones such as planning and permitting, award of funding and commencement and completion of construction. Construction is projected to start in Q3 2027 and complete by or before Q3 2029.
- The housing must be affordable for at least 40 years. However, given the City's ownership of the property and ability to negotiate the terms of the ground lease, the intent is that the housing will remain affordable in perpetuity.
- The developer is required to build the street and utility infrastructure necessary to support the project. However, contingent upon funding, the City will construct the developer required infrastructure improvements through the federal grant awarded Grand Loop project.
- The public benefits of the project include:
 - 80 affordable housing units at 30-60% AMI.
 - Environmentally friendly features include a fully electric building, and sustainable, durable building materials.
 - Contracting initiatives to maximize opportunities for minority-owned, women-owned and emerging small businesses. A minimum of 20% of subcontractor contracts will be awarded to minority-owned, women-owned, and emerging small businesses and a minimum of 15% of the workforce will be apprentices. Where appropriate, the general contractor will right size bid packages and conduct intentional outreach to minority-owned, women-owned and emerging small business firms to offer equal opportunity.

The substantive elements, which will be in a forthcoming ground lease agreement (to be reviewed separately by City Council), are as follows.

- 99-year lease term estimated to begin in Q3 2027 prior to the construction start date.
- Rent is calculated by multiplying the appraised value of the property (using the value set forth

in the February 25, 2025, appraisal prepared for the City by Colliers International) by a 5.7% cap rate. Rent is adjusted annually by 3%.

- In order to facilitate development of affordable housing, ground lease rent is discounted by 95% for the first 40 years of the lease term.
- No rent is due for the first 30 months of the lease term during construction and leasing until the project has positive cash flow.
- Rent will be reset at year 41 and will be recalculated based on a re-appraisal of the property and renewal of affordable housing commitments.

The total cost for the family housing project is estimated at \$38 million (\$475,000/unit), supported by significant investment from the City to advance its development. The project also leverages multiple public funding sources, including Low Income Housing Tax Credits and financing from the Washington State Department of Commerce Housing Trust Fund. These state funding programs are highly competitive with annual application cycles, and as such, the construction timeline is contingent upon successful award of these funds. Nevertheless, the project is considered competitive and has reasonable prospects of securing the necessary funding. The approximate city investments for the family housing project are outlined in the table below.

Land	\$1,312,000*
Affordable Housing Fund	\$4,000,000
Impact Fee Reductions (Parks, traffic)	\$351,000
Total	\$5,663,000

* Based on family project's share of February 2025 appraisal. \$1,014,000 less net present value of the discounted ground lease of \$87,546.

With a total project cost of \$38 million and a total value of public investment of \$5.6 million, the project achieves a leverage of non-City to City resources of 5.9:1. In addition to this economic return, the City will realize substantial public benefits as described above.

Next steps

Separate approvals will be needed for the project to progress including:

- The City's independent regulatory review of land use, engineering and building permits, projected to be completed by Q2 2027.
- City Council's review of and approval of the ground lease in Q4 2026 according current project schedule.

Provided public funding is secured in the 2025/2026 funding cycle, construction can begin in Q3 2027 and be completed by Q3 2029.

Advantage(s)

- Facilitates the implementation of the Heights District Plan.
- Provides affordable housing across a range of income levels, addressing a desperate community need.
- Offers opportunities for minority-owned contractors and apprentices.

Challenge(s)

The project requires significant financial commitment from the City to ensure the project's financial viability and develop new affordable housing in the Heights District. This project must also compete with other desirable affordable housing projects for scarce State of Washington subsidies.

Budget Impact

The City's estimated investment in the project is approximately \$5.65 million. This figure includes contributions from the Affordable Housing Fund, the value of the land and impact fee reductions, as detailed above. The contribution of land value will impact future revenues to the City's General Fund. The impact fee reductions will reduce amounts available for future transportation and parks projects.

Prior Council Review

- Workshop on August 26, 2024
- Council Meeting on September 16, 2024

Action Requested

On Monday, October 6, 2025, advance the resolution setting the date for the second reading and public hearing for October 13, 2025 to adopt the resolution approving the Disposition and Development Agreement between the City of Vancouver and Vancouver Heights Family Development Co., LLC (DDA) and authorize the City Manager, or designee, to execute the agreement in its substantive form, related implementation documents and certain amendments to the DDA.

Staff Contact

Amy Stewart, Real Estate Project Manager, Patrick Quinton, Economic Development Director, amy.stewart@cityofvancouver.us, patrick.quinton@cityofvancouver.us

Attachments:

1. Resolution
2. Disposition and Development Agreement (Site P)

10/13/2025

RESOLUTION NO. M- [Resolution Number]

A RESOLUTION relating to the approval of a disposition and development agreement between the City of Vancouver and Vancouver Heights Family Development Co., LLC; establishing the terms and conditions under which the Heights District Site P lot will be developed and ground leased by the City to Vancouver Heights Family Development Co., LLC; and authorizing the City Manager to execute the disposition and development agreement.

WHEREAS, the City owns real property commonly referred to as the Heights District Site P located at E. Mill Plain Blvd and Devine Road in City of Vancouver, Washington part of Clark County Tax Parcel 37909805 (the “Property”) and represents one of the first redevelopment sites envisioned in the Heights District Plan adopted by City Council in August 2020; and

WHEREAS, on March 11, 2024, the City, in consultation with the Heights Community Investment Committee, issued a “Heights District Request for Proposals” for the Property and, following a thorough public review process, selected Related/Northwest Development LLC and Vancouver Housing Authority, affiliates of Vancouver Heights Family Development Co., LLC as the preferred developer for the Property; and

WHEREAS, on September 27, 2024, the City and Related/Northwest Development LLC and Vancouver Housing Authority entered into an Exclusive Negotiation Agreement which was subsequently extended through October 31, 2025; and

WHEREAS, the City and Related/Northwest Development LLC and Vancouver Housing Authority have negotiated a disposition and development agreement between the City and Vancouver Heights Family Development Co., LLC that details the terms of the disposition and

RESOLUTION - 1

development of the Property into a mixed-use building with affordable housing and community serving commercial space; and

WHEREAS, a public hearing was duly noticed and held by the City Council on Monday October 13, 2025, regarding the approval of the attached disposition and development agreement.

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY OF VANCOUVER:

Section 1. The City Council hereby authorizes the City Manager to execute on behalf of the City the disposition and development agreement in substantially the form attached hereto as Exhibit "A." The City Manager is authorized to negotiate and execute any supplemental documents necessary to implement the agreement, as well as any amendments to the agreement, except those that extend deadlines for more than 180 days, modify the financial terms of the agreement, or that are inconsistent with the material substantive terms set forth in SR _____.

ADOPTED at a Regular Meeting of the Vancouver City Council this _____, of _____, 2025.

Anne McEnery-Ogle, Mayor

Attest:

Natasha Ramras, City Clerk

Approved as to form:

Nena Cook, City Attorney

RESOLUTION - 2

LAND DISPOSITION AND DEVELOPMENT AGREEMENT

BETWEEN

**CITY OF VANCOUVER, WASHINGTON,
a Washington municipal corporation**

AND

**VANCOUVER HEIGHTS FAMILY DEVELOPMENT CO., LLC,
a Californian limited liability company**

OCTOBER ____, 2025

LAND DISPOSITION AND DEVELOPMENT AGREEMENT

THIS LAND DISPOSITION AND DEVELOPMENT AGREEMENT (this “DDA” or “Agreement”) is made as of October ____, 2025 (the “Effective Date”), by and between CITY OF VANCOUVER, a Washington municipal corporation (“City”), and VANCOUVER HEIGHTS FAMILY DEVELOPMENT CO., LLC, a Californian limited liability company (“Developer”), and its permitted successors and assigns. City and Developer are each referred to in this Agreement individually as a “Party” and collectively as the “Parties”.

RECITALS

A. These Recitals refer to and utilize certain capitalized terms that are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. City owns the real property commonly referred to as the Heights District, consisting of three development sites generally located at E. Mill Plain Boulevard and Devine Road in Vancouver, Washington. The three project sites are referred to individually as Site B (“B”), Site C (“C”) and Site P (“P”), collectively as the “Sites” and identified in Exhibit A-1. The development of the Sites represents the first phase of redevelopment envisioned in the Heights District Plan (“District Plan”) adopted by the City in August of 2020.

C. On March 11, 2024, the City, in consultation with the Heights Community Investment Committee (“HCIC”), issued a “Heights District Request for Proposals” (the “RFP”) for the Sites and, following a thorough public review process, selected the Developer as the preferred developer for Site P.

D. This DDA is specifically for a portion of Site P, approximately 47,966 square foot site located at E. Mill Plain Blvd and Devine Road, Vancouver, WA part of Clark County Tax Parcel 37909805 (the “Property”). Site P is legally described on Exhibit A-2 attached hereto and the Property is depicted in Exhibit A-3 attached hereto.

E. As provided by the terms of this Agreement, the Parties anticipate that they will enter into a ground lease for the Property under the terms outlined in the Section 3.2

F. Consistent with the Heights District Plan and the current zoning designation for the Property, the Parties desire to cause the construction and development of the Property for the primary purposes of providing low-income housing and community amenities. The development shall include the construction of one mixed-use building with approximately 80 rent restricted housing units together with ground floor community serving commercial space (the “Improvements”). The Parties acknowledge that another mixed-use building with approximately 51 rent restricted housing units for seniors aged 55 years and over will be developed on the remainder of Site P by an affiliate of the Developer (“Senior Housing Project”) at a later date. The City will enter into a separate disposition and development agreement for the Senior Housing Project with the Developer’s affiliate and anticipates both buildings being developed on Site P in

phases with the Improvements constructed first, followed by the Senior Housing Project.

G. The City and HCIC has determined that the Developer has the necessary expertise, skill and ability to carry out the commitments set forth in this Agreement and that this Agreement is in the best interests, and will materially contribute to the City's economic development goals by the project aligning with the outcomes of the Heights District Plan and Heights Equitable Development Plan, specifically providing low income housing.

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer agree as follows:

ARTICLE 1. DEFINITIONS AND EXHIBITS

Section 1.1 Definitions.

In addition to the terms defined elsewhere in this Agreement, the following definitions apply throughout this Agreement.

(a) "Affordability Requirements" means the affordable housing requirements set forth in the Use provisions below.

(b) "Agreement" or "DDA" means this Land Disposition and Development Agreement, including the attached Exhibits and all subsequent operating memoranda and amendments to this Agreement.

(c) "Certificate of Occupancy" means the final certificate of occupancy issued by the City, or comparable City sign-off, on the substantial completion of construction of the Improvements.

(d) "City" means the City of Vancouver, Washington, a Washington municipal corporation, and its successors and assigns.

(e) "City Council" means the City Council of the City of Vancouver, Washington.

(f) "City Documents" shall mean, collectively, this Agreement, the Ground Lease, and all other documents required to be executed between Developer and City in connection with the transaction contemplated by this Agreement.

(g) "City Event of Default" has the meaning set forth in Section 7.3.

(h) "City Indemnitees" includes the City, and its council members, officers, agents, consultants, and employees, each an "Indemnified Party".

- (i) “Closing Date” means the date of execution of the Ground Lease.
- (j) “Construction Bonds” means the Developer’s labor and surety bonds described in Section 2.5.
- (k) “Construction Plans” means all construction documentation upon which Developer, and Developer’s several contractors, shall rely on in building each and every part of the Improvements and shall include, but not necessarily be limited to, final architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications (also known as “working drawings”) and a time schedule for construction.
- (l) “Deposit” means the Good Faith Deposit of Ten Thousand Dollars, made r pursuant to the Exclusive Negotiating Agreement.
- (m) “Developer” means Vancouver Heights Family Development Co., LLC (“Developer”) and its permitted successors and assigns.
- (n) “Developer’s Affiliate” has the meaning set forth in Section 6.1.
- (o) “Development” means Heights District Site P and the Improvements thereon.
- (p) “Effective Date” has the meaning set forth in the first sentence of this Agreement.
- (q) “Escrow” means the escrow established with the Title Company for the purpose of ground leasing the Property to Developer.
- (r) “Event of Default” has the meaning set forth in Section 7.4.
- (s) “Exclusive Negotiating Agreement” or “ENA” means that certain Exclusive Negotiating Agreement dated as September 27, 2024, between the City and Related/Northwest Development LLC and Vancouver Housing Authority, affiliates of the Developer.
- (t) “Frontage Improvements” has the meaning set forth in Section 4.9(b).
- (u) “Hazardous Materials” means any substance, material, or waste which is: (1) defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “restricted hazardous waste”, “pollutant” or any other terms comparable to the foregoing terms under any provision of Washington law or federal law; (2) petroleum and any fraction thereof; (3) asbestos and asbestos containing materials; (4) polychlorinated biphenyls; (5) radioactive materials; (6) mold; (7) Methyl Tertiary Butyl Ether; or (8) determined by Washington, federal or local governmental authority to be capable of posing a risk of injury to health, safety, property, or the environment. Without limiting the foregoing, Hazardous Materials means and includes any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term, by any Hazardous Materials Laws including any federal, state or local environmental statute, regulation

or ordinance presently in effect that may be promulgated in the future, as such as statutes, regulations and ordinances may be amended from time to time.

(v) “Hazardous Materials Laws” means all federal, state, and local laws, ordinances, regulations, orders and directives governing hazardous waste, hazardous substances, discharges of pollutants to soil or groundwater, wastewater discharges, drinking water, air emissions, Hazardous Materials releases or reporting requirements, Hazardous Materials use, storage or disposal, and employee or community right-to-know requirements related to Hazardous Materials and the work being performed under this Agreement.

(w) “Improvements” has the meaning set forth in Recital G above.

(x) “Infrastructure Improvements Plan” means the plan set forth in Exhibit G describing the infrastructure improvements that Developer will undertake in accordance with Section 4.9 below.

(y) “Litigation Disclosure” means any pending actions, suits, arbitrations, claims or proceedings the City is subject to as described in Section 8.18(b)(6).

(z) “Memorandum of Disposition and Development Agreement” means the memorandum of Disposition and Development Agreement to be recorded against the Property. The form of the Memorandum of Disposition and Development Agreement is attached as Exhibit D.

(aa) “Memorandum of Ground Lease” means the memorandum of the Ground Lease to be recorded against the Property on the Closing Date. The form of the Memorandum of Ground Lease will be attached as an exhibit to the Ground Lease.

(bb) “Notice of Completion” has the meaning set forth in Section 4.14 below.

(cc) “Parties” means the City and Developer.

(dd) “Planned Public Improvements” means those public infrastructure improvements set forth in the Heights District Plan, including the Grand Loop that, upon securing funding, the City plans to construct as transportation infrastructure surrounding the Property, as depicted on the attached Exhibit E.

(ee) “Property” has the meaning set forth in Recital E.

(ff) “Related Parties” shall mean, with respect to City, its council members, officers, agents, representatives, and employees and, with respect to Developer, its officers, directors, employees, shareholders, agents, and representatives.

(gg) “Release” for the purposes of Section 3.6(e), means any spillage, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping, or disposing into the environment, including but not limited to the abandonment or discharging of barrels, containers, and other closed receptacles containing Hazardous Materials.

(hh) “Released Parties” has the meaning set forth in Section 3.6(d).

(ii) “Schedule of Performance” means the summary schedule of actions to be taken by the Parties pursuant to this Agreement to achieve development of the Improvements and ground leasing the Property to the Developer. The Schedule of Performance is attached to this Agreement and incorporated herein by this reference as Exhibit B. Any dates specified in the Schedule of Performance may be extended by written agreement of the Parties.

(jj) “Schematic Design” has the meaning set forth in Section 2.3 below.

(kk) “Senior Housing Project” has the meaning set forth in Recital G above.

(ll) “Sites” has the meaning set forth in Recital B above.

(mm) “Summary of Sources and Uses” means the summary of sources and uses for the construction of the Improvements on the Property. The Summary of Sources and Uses is attached hereto and incorporated herein as Exhibit C. The Summary of the Sources and Uses may be amended by written agreement of the Parties, provided that such subsequent modifications that are agreed upon by the parties shall not require any amendment of this DDA.

(nn) “Term” has the meaning set forth in Section 1.3, below.

(oo) “Title Company” means the Vancouver, Washington office of Chicago Title/Fidelity National Title at 655 West Columbia Way, Suite 200, Vancouver, WA 98660, unless modified pursuant to Section 3.3.

Section 1.2 Exhibits and Schedules.

The following exhibits and schedules are attached to and incorporated in the Agreement:

- Exhibit A-1: Map of Site
- Exhibit A-2: Legal Description of Site P
- Exhibit A-3: Depiction of Property
- Exhibit B: Schedule of Performance
- Exhibit C: Summary of Sources and Uses
- Exhibit D: Form of Memorandum of Disposition and Development Agreement
- Exhibit E: Planned Public Improvements
- Exhibit F: Grand Loop Plan
- Exhibit G-1: Infrastructure Improvements Plan
- Exhibit G-2: Depiction of Infrastructure Improvements Plan
- Exhibit H: Temporary Construction License Area

- Schedule 5.6: City Self-Insurance Certification Letter
- Schedule 7.11: Assignment of Plans Agreements

Schedule 8.18(b)(6): Litigation Disclosure

Section 1.3 Term.

The “Term” of this Agreement, shall commence on the Effective Date and shall continue for a period of ten (10) years following the Effective Date or the earlier termination of this Agreement.

ARTICLE 2.
PREDISPOSITION REQUIREMENTS

Section 2.1 Conditions Precedent to Ground Leasing the Property.

The requirements set forth in this Article are conditions precedent to the City’s obligations to ground lease the Property to the Developer, and all such conditions precedent must be satisfied in accordance with the dates set forth in the Schedule of Performance attached hereto as Exhibit B, as such times may be extended in writing by either Party. Performance and achievement of the actions set forth in this Article 2 constitute conditions precedent to ground leasing the Property. Satisfaction of these conditions depends on performance by Developer. Only the City can waive satisfaction of the conditions in this Article 2 and any such waiver must be in writing signed by the City Manager and approved as to form by the City Attorney.

Section 2.2 Summary of Sources and Uses.

The Developer shall submit a Summary of Sources and Uses, in a form acceptable to the City. The Parties hereby acknowledge that the Summary of Sources and Uses attached hereto as Exhibit C satisfies the requirements of this Section 2.2 and reflects the Financing Proposal provided by Developer pursuant to the ENA.

Section 2.3 Conceptual Site Plan and Design Considerations.

(a) As of the Effective Date and pursuant to the Schematic Plan and Master Plan provisions of the ENA, the Developer has delivered to the City, and the City has approved, a conceptual site plan and elevation drawings (“Schematic Design”) for the Improvements to be developed on the Property for informational purposes only. While the City and HCIC may provide input or comments in their proprietary roles, formal approval of the Improvements shall occur solely through the applicable City permitting and entitlement processes, and nothing in this Section shall be construed to limit or modify such regulatory discretion.

(b) Any material changes to the Schematic Design must be shared with the City, in its proprietary role and the HCIC for informational purposes and comment. If the unit count or unit mix substantially changes from the Schematic Design the City in its proprietary role and the HCIC must be informed right away and offered an opportunity to comment. Developer shall consider all input in good faith, but final design determinations shall be governed by the applicable permitting process.

(c) For purposes of this Section 2.3, a material change shall mean any change which is expected to (i) substantially alter the appearance of the Development, (ii) change the unit-mix or unit count, (iii) materially reduce the quality of exterior materials, (iv) materially reduce the quality of amenities of the Development.

(d) For ease of coordination on the infrastructure improvements, both parties must share their respective design plans in both PDF and AUTOCAD format throughout the design process. Developer must submit its plans to the City to review in its proprietary role prior to planning and permit submission.

(e) For the purposes of this Section, City and HCIC must respond in writing within ten (10) business days from receipt of any plans from the Developer. If no response is delivered within said timeframe, its deemed City and HCIC shall be deemed to approve the design and/or any design changes.

Section 2.4 Financing.

All financing necessary to construct the Improvements shall be closed by or committed to Developer prior to, or simultaneously with, the Closing Date. Developer shall also submit to the City evidence reasonably satisfactory to the City that any conditions to the release or expenditure of funds as the sources of funds to pay the costs of constructing the Improvements have been met or will be met upon the Closing Date and subject to Developer's satisfaction of standard disbursement preconditions required to be satisfied on a periodic basis, for constructing the Improvements. Submission by Developer, and approval by the City, of such evidence of funds availability shall be a condition precedent to the City's obligation to close on the Ground Lease.

Section 2.5 Construction Bonds.

No later than the date set forth in the Schedule of Performance, Developer shall obtain a contractor's surety bond for payment of labor and materials and a performance and payment bond for construction of the Improvements, each in an amount equal to one hundred percent (100%) of the scheduled cost of construction of the Improvements (collectively, the "Construction Bonds"). Each bond shall name the City as co-obligee and shall be issued by a reputable insurance company licensed to do business in Washington with a minimum "Best" Insurance Guide rating of "A-VII" and otherwise reasonably acceptable to the City. The form of the surety bond and the performance bond shall be subject to the City's prior review and written approval, which shall not be unreasonably withheld, conditioned or delayed. Only upon final approval shall this condition be met. No work shall be initiated until approval of the Construction Bonds or other security has been received.

Section 2.6 Obtain all Applicable Governmental Approvals.

(a) Within the time set forth in the Schedule of Performance, Developer shall use commercially reasonable efforts to obtain all necessary land use and governmental approvals required for the construction and operation of the Improvements ("Governmental Approvals"), including but not limited to City review and approval of a site plan and building permits. Only

upon delivery of evidence of issuance of all applicable Governmental Approvals to the City shall the conditions of this Section be deemed met. If such evidence is not delivered within the time set forth in the Schedule of Performance, this Agreement may be terminated in accordance with the terms of Article 7 (subject to any notice and cure periods set forth therein).

Section 2.7 Building Permits.

(a) No later than the date set forth in the Schedule of Performance, Developer shall apply for a building permit allowing for the construction of the Improvements. After submitting the application for a building permit, Developer shall diligently pursue and obtain a building permit for the Improvements, and no later than the date set forth in the Schedule of Performance, Developer shall deliver evidence to the City that Developer is entitled to issuance of a building permit for the Improvements upon payment of permit fees. The City shall render all reasonable assistance (at no cost to the City) to Developer to obtain the building permit.

(b) Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any required permits, applications, or allocations, and in no way limits the discretion of the City in the permit allocation and approval process for any the Improvements. However, City will use best efforts to expediently review and process building permit applications.

Section 2.8 Insurance.

Developer shall furnish to the City evidence of the builders risk insurance coverage meeting the requirements of Section 5.6 below, no later than the date set forth in the Schedule of Performance.

Section 2.9 Inspection of Property.

As of execution of this Agreement, Developer has made all such investigations regarding the Property, the suitability of the Property for development (including but not limited to investigation of environmental hazards, geologic conditions, soils conditions, or water conditions on or about the Property) as was required under the Exclusive Negotiating Agreement. The Developer did not submit an Unsuitability Notice (as defined in the Exclusive Negotiating Agreement) and is hereunder accepting title to the Property in an “as-is” condition as set forth in Section #, hereof.

Section 2.10 Legal Lot.

The City will create a separate legal lot for the Property through a short plat process to create a separate unit of land which complies with all requirements of state and local law to be considered a legal lot capable of being ground leased. The Developer will present the configuration of the parcel as a to-be-created legal lot to the City for its review and approval. Thereafter, the City, at no cost to the Developer, will complete the platting process to deliver a new legal lot to the Developer. The City shall use commercially reasonable efforts to record the plat by the date set forth in the Schedule of Performance.

ARTICLE 3.
DISPOSITION OF PROPERTY

Section 3.1 Conditions for Ground Lease.

Provided the pre-disposition requirements set forth in Article 2 have all been satisfied and the additional closing conditions set forth in Section 3.4 have been satisfied, the City shall ground lease the Property to the Developer pursuant to the terms, covenants, and conditions of this Agreement.

Section 3.2 General Terms of Ground Lease.

(a) The term of the Ground Lease shall be ninety-nine (99) years commencing from the Closing Date.

(b) The annual Ground Lease rent shall be calculated by multiplying the appraised value of the Property by a cap rate of (5.7%) and discounted for the first forty (40) years of the lease term. As used in this Section 3.2, the “appraised value” means the as-restricted value set forth in the February 25, 2025 appraisal prepared on behalf of City by Colliers International Valuation & Advisory Services as increased annually by three percent (3%).

(c) Rent shall be abated for the first thirty (30) months from the Commencement Date (as defined in the Ground Lease) and discounted for the first forty (40) years of the term.

(d) Use of the Property subject to the Ground Lease shall be restricted to the Affordability Requirements and developed in accordance with the Schematic Design.

(e) At Closing, the Deposit shall be credited against the Rent in accordance with the ENA.

Section 3.3 Opening Escrow.

The Parties shall establish the Escrow with the Title Company. The Parties shall execute and deliver all written instructions to the Title Company to accomplish the terms hereof, which instructions shall be consistent with this Agreement. The Parties may submit their own escrow instructions to Title Company provided such instructions are consistent with the terms of this Agreement. Upon request by Developer, the Title Company may be changed to a company requested by Developer, provided: (a) Developer makes the request prior to the opening of escrow; and (b) the company is approved by the City.

Section 3.4 Closing.

The Closing Date shall occur within thirty (30) days following the date on which all

conditions precedent to ground lease set forth in Article 2 have been satisfied, but in no event later than the date set forth in the Schedule of Performance, and only in the event that all conditions precedent set forth in Article 2 have been satisfied by the party required to perform or waived in writing by the other party as set forth herein.

(a) City Conditions to Closing. In addition to the conditions precedent to the Closing Date set forth in Article 2, the obligation of the City to ground lease the Property pursuant to this Agreement is subject to the satisfaction on or before the Closing Date (or such earlier date as is specifically set forth in this Agreement) of all of the following conditions precedent which conditions are for the benefit of the City only and the satisfaction of which may be waived only in writing by the City:

(1) Developer shall have furnished the City with evidence of the insurance coverage meeting the general insurance requirements set forth in Section 5.6.

(2) Developer shall have obtained approval of the Construction Plans from the City.

(3) Developer shall have executed and delivered to the City, the Memorandum of Ground Lease, and any other documents and instruments required to be executed and delivered, all in a form and substance satisfactory to the City.

(4) Developer has obtained Governmental Approvals necessary for the construction allowing for the construction of the Improvements as required under Section 2.6 above; provided however the Developer may satisfy this requirement with regards to the building permit, if the Developer provides the City with a permit ready letter from the City Building Department.

(5) There shall exist no condition, event or act which would constitute a material breach or default under this Agreement.

(6) All representations and warranties of Developer contained in any part of this Agreement shall be true and correct in all material respects.

(b) Developer Conditions to Closing. The obligation of Developer to ground lease the Property pursuant to this Agreement is subject to the satisfaction on or before the Closing Date (or such earlier date as is specifically set forth in this Agreement) of all of the following conditions precedent which conditions are for the benefit of Developer only and the satisfaction of which may be waived only in writing by Developer:

(1) Delivery and execution by the City of all instruments and other items required to be delivered by City pursuant to this Agreement;

(2) City's warranties and representations set forth herein shall be true and correct as of the Closing Date;

(3) City shall have performed each and every obligation to be performed by the City pursuant to this Agreement; and

(4) As of the Closing Date, the Title Company shall have issued or shall have committed to issue, upon the sole condition of the payment of its regularly scheduled premium, a Title Policy as set forth in Section 3.5.

Section 3.5 Condition of Title.

(a) On the Closing Date, the Title Company shall be prepared to issue to Developer an ALTA extended coverage policy of title insurance and all endorsements required by Developer and its investors or lenders insuring Developer's ground leasehold title to the Property (the "Title Policy"), which shall be free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except:

(1) Applicable building and zoning laws and regulations;

(2) Any provisions of the Heights District Plan;

(3) The provisions of this Agreement;

(4) Any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Memorandum of Ground Lease;

(5) Exceptions as listed in the Property preliminary title report and Title Company shall be irrevocably committed to issue to the Developer an ALTA extended coverage owner's policy of title insurance conditioned only upon the payment of the insurance premium.

Section 3.6 Condition of Property.

- (a) **"AS IS" TRANSACTION. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT TO THE CONTRARY, DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE CITY IS GROUND LEASING THE ENTIRE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE CITY AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER; (C) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, HABITABILITY, MERCHANTABILITY, OR**

FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE; (D) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY; (E) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI- GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY; AND (F) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE PROPERTY. DEVELOPER AFFIRMS THAT DEVELOPER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE CITY OR ANY OF ITS RESPECTIVE EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE CITY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. DEVELOPER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

(b) Survival. The terms and conditions of this Section shall expressly survive the Closing Date. The City is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property, or any portion thereof, furnished by any contractor, agent, employee, servant or other person. Developer acknowledges that this as an "as is" transaction and any faults, liabilities, defects or other adverse matters that may be associated with the Property. Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with Developer's counsel and understands the significance and effect thereof.

(c) Acknowledgment. Developer acknowledges and agrees that: (1) to the extent required to be operative, the disclaimers of warranties contained in this Section are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements; and (2) the disclaimers and other agreements set forth herein are an integral part of this Agreement, that the City would not have agreed to ground lease the Property to Developer pursuant to this Agreement without the disclaimers and other agreements set forth in this Section.

(d) Developer's Release of the City. Developer, on behalf of itself and anyone claiming by, through or under Developer hereby waives its right to recover from and fully and irrevocably releases the City, its council members, board members, employees, officers, directors, representatives, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to any of the following, except as expressly set forth in this Agreement to the contrary or to the extent directly caused by the willful misconduct or gross negligence of the Released Parties: (1) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever; (2) any presence of Hazardous Materials; and (3) any information furnished by the Released Parties under or in connection with this Agreement. Notwithstanding the generality of the foregoing, the foregoing waiver and release does not include any claims, responsibility, or liability to the extent related to the representations and warranties of City in this Agreement and in the Ground Lease.

(e) Scope of Release. The release set forth in this Section includes claims of which Developer is presently unaware or which Developer does not presently suspect to exist which, if known by Developer, would materially affect Developer's release of the Released Parties. Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, Developer agrees, represents and warrants that Developer realizes and acknowledges that factual matters now unknown to Developer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Developer nevertheless hereby intends to release, discharge and acquit the City from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses, except to the extent related to the representations and warranties of City in this Agreement and in the Ground Lease. Accordingly, Developer, on behalf of itself and anyone claiming by, through or under Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right Developer and anyone claiming by, through or under Developer, may have.

Section 3.7 Delivery upon Closing Date.

The City shall deliver possession of the Property to Developer upon the Closing Date free and clear of all tenants and other occupants.

ARTICLE 4.

DEVELOPER CONSTRUCTION REQUIREMENTS AFTER CLOSING

Section 4.1 Construction Pursuant to Plans.

Unless modified by operation of Section 4.2, the Improvements shall be constructed substantially in accordance with the plans approved through the City's permitting process (the "Construction Plans") and the terms and conditions of the land use permits and approvals and

building permits, including any variances granted. Any material changes to the Construction Plans that would affect the City's proprietary interests (e.g., affordability mix, unit count, or ground floor commercial use) shall be shared with the City for review and comment, but shall not require separate approval outside of the standard City permitting process.

Section 4.2 Change in Construction of Improvements.

(a) If Developer desires to make any material change in the Improvements which are not substantially consistent with the Construction Plans Developer shall submit the proposed change to the City and HCIC for its approval, which approval shall not be unreasonably withheld, conditioned or delayed. No change which is required for compliance with building or zoning codes or other government health and safety regulations shall be deemed material. If the Improvements, as modified by any such proposed change, will conform to the requirements of this Agreement, and the Construction Plans, the City shall approve the change by notifying Developer in writing. For purposes of this Section 4.2, a material change shall mean any change which is expected to (i) substantially alter the appearance of the Development, (ii) materially changes the unit-mix or unit count, (iii) materially reduces the quality of exterior materials, (iv) materially change the public amenities of the Development. Notwithstanding the foregoing, no change shall be deemed a "material change" if it is (A) required for compliance with building or zoning codes or other governmental health and safety regulations, (B) made in response to a requirement of a public or private lender, investor, or tax credit authority, or (C) a change in internal configurations, finishes, or systems that does not affect exterior appearance, unit count, or public amenities.

(b) Unless a proposed change is rejected by the City and HCIC within ten (10) working days (excluding City and other legal holidays), it shall be deemed approved. If rejected within such time period, the previously approved Construction Plans shall continue to remain in full force and effect. If accepted, the parties acknowledge that the Construction Plans shall be modified as necessary to reflect the accepted change to the Improvements. If the City rejects a proposed change, it shall provide Developer with specific reasons therefor and the Developer shall have the right to revise and resubmit its proposal to the City.

(c) The approval of changes in the Schematic Design and/or the Construction Plans by the City and HCIC pursuant to this Section shall be in addition to any approvals required to be obtained from the City pursuant to building permit requirements or the conditions of approval. Approval of changes in the Schematic Design and/or the Construction Plans by the City in its proprietary role shall not constitute approval of building permit requirements or conditions of approval by the City in its regulatory role and shall in no way limit the City's discretion in approving changes to the building permits or conditions of approval.

Section 4.3 Commencement of Construction of Improvements.

Developer shall commence construction of the Improvements no later than the date set forth in the Schedule of Performance as such times may be extended in writing by the Parties and subject to any notice and cure provisions hereunder.

Section 4.4 Completion of Construction of Improvements.

Developer shall diligently prosecute to complete the construction of the Improvements no later than the date set forth in the Schedule of Performance as such times may be extended in writing by the Parties and subject to any notice and cure provisions hereunder and subject to Force Majeure as defined in Section 8.24.

Section 4.5 Equal Opportunity and Diverse Workforce Plan.

(a) During the construction and operation of the Development discrimination on the basis of race, color, creed, religion, age, sex, gender, gender identity, gender expression, sexual orientation, marital status, pregnancy, national origin, ancestry, military and veteran status, or disability in the hiring, firing, promoting, or demoting of any person engaged in the construction or other work at the Property is not allowed.

(b) During the construction of the Development, Developer and the general contractor shall comply with all applicable nondiscrimination laws and policies, and shall create and implement a workforce and contracting plan that seeks to increase opportunities for Black Indigenous and People of Color (BIPOC) and women owned and small emerging businesses The Developer and general contractor shall make good faith, commercially reasonable efforts to meet the following project-wide participation goals:

(1) General contractor must identify opportunities for smaller businesses and Disadvantaged Business Enterprises (DBEs).

(2) Where appropriate general contractor must create right sized bid packages to ensure accessibility for smaller businesses and DBEs.

(3) General contractor must conduct intentional outreach to BIPOC, women-owned and emerging small business firms prior to and through bidding process to offer equal opportunity.

(4) Minimum of 20% BIPOC, women owned, and emerging small businesses participation.

(5) Minimum of 15% apprenticeship participation.

The Developer is required to work with the City in connecting BIPOC, women owned and small emerging businesses using the City's local connections to ensure the above referenced goals are met. The City and Developer shall review performance relative to these goals at regular intervals. Failure to meet the goals shall not, by itself, constitute a default under this Agreement, provided that the Developer demonstrates reasonable, good faith efforts to implement the measures in this Section and reports participation data as required.

Section 4.6 Planned Public Improvements.

Pursuant to the Heights District Plan, the City intends to complete the Planned Public

Improvements and coordinate such construction with the Developer as follows:

- (a) City will provide a joint utility trench plan for location of all dry utilities and will coordinate the design of the joint utility trench with Developer and Clark Public Utility District. City and Developer will collaborate on the design to ensure the Improvements' electrical needs are met. The City shall ensure that the Improvements' electrical and utility needs are met without imposing material additional costs or delays on the Developer.
- (b) City plans to design and construct the undergrounding of overhead utility lines on the south side of E. Mill Plain Blvd and Devine Road south of E. Mill Plain Blvd and will seek reimbursement from Developer for their proportionate share of the costs in accordance with Section 4.9(e) below. Timing of this work is to be determined and City will use its best efforts to coordinate closely with Developer and will provide at least sixty (60) days advance written notice of the commencement of the work.
- (c) City plans to design and construct improvements to the intersection of E. Mill Plain Blvd and Devine Road, including a new traffic signal, new paving, striping, bike and pedestrian facilities. The timing of these improvements is yet to be determined but the City will coordinate closely with the Developer and provide at least sixty (60) days advance written notice prior to commencement of the work.
- (d) If any of the City's improvements described in this Section 4.6 and Section 4.9 (d) interfere with access to the Property or impact the operations of the Improvements or causes any damage to the Improvements, City shall promptly reimburse Developer for any resulting, repair costs, delay costs, or other direct impacts, including costs, expenses or direct damages incurred by the Developer resulting from such damage, interference with access to the Property or adverse impact on the construction or operations of the Improvements.

Section 4.7 Compliance with Applicable Law; Prevailing Wage Requirement.

- (a) Developer shall cause all construction to be performed in compliance with:
 - (1) All applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies in effect as of the Effective Date or that may be enacted hereafter, and
 - (2) All directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after the payment of all applicable fees, procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and Developer shall be responsible to the City for the procurement and maintenance thereof, as may be required

of Developer and all entities engaged in work on the Property, or any portion thereof.

(b) Unless the Improvements will be paid for in whole or in part out of public funds secured by the Developer, the construction required under this Agreement does not constitute a “public work” as none of the Improvements will be paid for in whole or in part by the City and, except for the Frontage Improvements to be constructed by Developer and dedicated to the City, the Developer retains ownership of the Improvements. If and only to the extent the work performed under this Agreement is deemed a public work shall the provisions of this subsection (b) apply. If and only to the extent required by law, the Developer shall, and shall cause the contractor and subcontractors, to pay prevailing wages in the construction of the Improvements as those wages are determined.

(1) The State of Washington applicable prevailing wage rates for this project, which is located in Clark County, may be found at the following website address of the Department of Labor and Industries: <https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>.

(2) As applicable, Developer shall require that any construction contract include a requirement for the general contractor and each subcontractor to have on file current project specific “Statement of Intent to Pay Prevailing Wages” with the Washington State Department of Labor and Industries before payment will be made for work performed and require an approved “Affidavit of Wages Paid” form to be filed upon completion of the work performed.

(3) In case any dispute arises as to what the prevailing rates of wages for work of a similar nature are and such dispute cannot be resolved by the parties involved, the matter shall be referred to the director of the Department of Labor and Industries of the State of Washington for arbitration, and the L&I Director’s decision shall be final, conclusive, and binding on all parties involved in the dispute.

(c) Developer shall indemnify, hold harmless and defend (with counsel selected by Developer and reasonably approved by the City) the City Indemnitees against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Chapter 39.12 RCW. The provisions of this Section shall survive expiration of the Term or other termination of this Agreement and shall remain in full force and effect.

Section 4.8 Progress Report.

Until such time as Developer has completed construction as evidenced by issuance of Certificates of Occupancy by the City for all buildings located on the Property, Developer shall provide the City with quarterly progress reports, or more frequent updates if City reasonably requires, regarding the status of the construction of the Improvements.

Section 4.9 Developer Construction Responsibilities.

(a) It shall be the responsibility of Developer to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with this Agreement.

(b) Developer shall be solely responsible for all aspects of Developer's conduct in connection with the Development, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of construction work, and the performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and managers.

(c) As a condition of the Government Approvals, Developer will design and build interim frontage improvements along the Property's E. Mill Plain Blvd and Devine Road frontages in the area between the existing and future right-of-way ("Frontage Improvements"). The details of the Frontage Improvements will be agreed to through the Governmental Approvals process.

(d) As a condition of Government Approvals, Developer will design and build, at Developer's sole expense, the offsite infrastructure improvements described in the Infrastructure Improvements Plan in Exhibit G-1 and Exhibit G-2. Developer shall not be responsible for constructing any infrastructure improvements beyond the limited scope detailed in Exhibit G-1. The City has designed an enhanced version of the Infrastructure Improvements Plan known as the Grand Loop as detailed in Exhibit F attached hereto. The term "Grand Loop" includes all right-of-way, water, sewer, stormwater, electrical utility improvements and a linear park with decorative and enhanced public realm features that abut the Property and provide access to, utilities and frontage improvements that serve the Property. Contingent upon receipt by the City of sufficient grant funding and in order to facilitate development of affordable housing as a permissible expenditure of public funds pursuant to Article 8, Section 7 of the Washington State Constitution, the City plans to construct the Grand Loop. City anticipates starting construction of the Grand Loop in Quarter 1 2027 and completion in Quarter 3 2028, but no later than December 31, 2028 and will instruct the contractor to prioritize the Grand Loop improvements adjacent to the Property. If the City constructs the Grand Loop as planned, the Developer will not be responsible for constructing the Infrastructure Improvements Plan and the City and Developer will coordinate closely on the construction of the Improvements and Grand Loop ensuring minimal conflicts between construction crews. If the City constructs the Grand Loop the City shall provide Developer with a written, detailed phasing schedule at least sixty (60) days prior to commencement of construction of the Grand Loop, ensuring that Developer's construction activities will not be materially impacted by City's improvements or conflicts between construction crews.

(e) Developer will reimburse the City for its proportionate share of costs related to undergrounding the utility lines along E. Mill Plain Blvd and Devine Road but shall be no more than \$155,000.00. Payment shall be made by check or in another form agreed to by the Parties at closing of the Ground Lease. Pursuant to RCW 82.02.020, the City will deposit the funds in an interest-bearing reserve account exclusively to fund the undergrounding capital improvement project. If the City has not expended the funds within five years of collection, the City will return the funds with interest to the Developer. The City will provide the Developer a cost estimate for the work prior to the commencement of construction. Upon the Developer's written request the

City will provide the Developer a formal, itemized invoice which shall include:

- (i) A breakdown of all actual costs incurred;
- (ii) Developer's proportional share calculation; and
- (iii) Supporting documentation confirming total project costs.

If actual costs exceed the original estimate Developer shall have the right to review and approve any additional expenditures before being obligated to reimburse City.

(f) Any review or inspection undertaken by the City with reference to the Development is solely for the purpose of determining whether Developer is properly discharging its obligations to the City and should not be relied upon by Developer or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Development.

Section 4.10 Mechanic's Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Property, or any portion thereof, or the Improvements or a stop notice is issued affecting any portion of the Property, the City in connection with the Development, then Developer shall, within sixty (60) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the City a surety bond from a surety reasonably acceptable to the City in sufficient form and amount, or provide the City with other assurance reasonably satisfactory to the City that the claim of lien or stop notice will be paid or discharged. Provided, however, that Developer shall have the right to contest in good faith any such liens or stop notice.

(b) If Developer fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section or obtain a surety bond, then in addition to any other right or remedy, upon prior notice to Developer, the City may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at Developer's expense. Alternatively, the City may require Developer to immediately deposit with the City the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against Developer; provided, however, that Developer shall be permitted to exercise any rights of appeal of such adverse determination

Section 4.11 Inspections.

Developer shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Property by the City and by public authorities during reasonable business hours upon forty-eight (48) hours' prior written notice for the purposes of determining compliance with this Agreement.

Section 4.12 Information.

Developer shall provide any information reasonably requested by the City in connection with the Development; provided that Developer shall not be required to disclose any proprietary, confidential, or privileged information. The Developer may condition any disclosure on appropriate confidentiality protections and shall not be obligated to provide information that is

protected by applicable law, contractual confidentiality obligations, or that could compromise Developer's competitive position.

Section 4.13 Records.

(a) Developer shall maintain complete, accurate, and current records pertaining to the Development for a period of five (5) years after the creation of such records and shall permit any duly authorized representative of the City to inspect and copy records upon reasonable prior notice to Developer. Such records shall include all invoices, receipts, and other documents related to expenditures associated with the implementation of this Agreement. Records must be kept accurate and current.

(30) The City shall notify Developer of any records it deems insufficient. Developer shall have thirty (30) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the City in such notice, or if a period longer than thirty (30) days is reasonably necessary to correct the deficiency, then Developer shall begin to correct the deficiency within thirty (30) days and complete the correction of the deficiency as soon as reasonably possible.

Section 4.14 Notice of Completion.

(a) Promptly after completion of all of the Improvements on the Property in accordance with the provisions of this Agreement relating solely to the obligations of Developer to construct the Improvements the City shall provide an instrument so certifying the completion of the Improvements (the "Notice of Completion").

(b) The Notice of Completion shall be conclusive determination that all covenants in this Agreement with respect to the obligations of Developer to construct the Improvements have been met. Issuance of a Notice of Completion by the City, however, shall not constitute evidence of compliance with Developers' obligation to comply with the requirements of Section 4.9 and shall not terminate the obligations of Developer that survive the termination of this Agreement. The Notice of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust securing money loaned to finance the Improvements.

Section 4.15 Construction Coordination.

(a) Access; Interference. Developer shall comply in all material respects with all applicable City permitting and construction requirements related to street closures, construction disturbances, and the maintenance of access to neighboring facilities and businesses. The Parties shall coordinate in good faith on construction sequencing to avoid conflicts with the Planned Public Improvements. Nothing in this Section shall impose additional permitting or operational obligations on Developer beyond those required under applicable laws or permits.

(b) Construction Traffic. The Parties shall agree to a route for the construction truck traffic to utilize during construction.

(c) Construction Worker Parking. Developer shall provide a construction worker parking plan to City for review and approval (such approval not to be unreasonably withheld, conditioned, or delayed) prior to commencement of construction.

(d) Planned Public Improvements. The City shall have the right to occupy and use an agreed-upon area located within the boundaries of Site P around the perimeter of the Property as depicted within Exhibit H solely for the purposes of constructing the Planned Public Improvements and the Grand Loop (“Temporary Construction License Area”). The City’s access and use shall be strictly limited to the Temporary Construction License Area and the approved scope of work, and shall be conducted in a manner that does not unreasonably interfere with, delay, or increase the cost of the Developer’s construction, operations, or other activities on the Property. The City shall be responsible, at its sole cost and expense, for repairing or restoring any portion of the Property (including landscaping, improvements, and utilities) disturbed or damaged by its activities to a condition equal to that existed immediately prior to entry, promptly upon completion of its work. The City shall provide the Developer with no less than sixty (60) days’ prior written notice of the commencement of construction, which notice shall include a detailed schedule, scope of work, site logistics plan, and safety protocols. Prior to any entry, the parties shall meet and confer to coordinate activities, establish access and staging protocols, and agree on measures to avoid interference with the Improvements. The City shall indemnify, defend, and hold harmless the Developer, its affiliates, contractors, and lenders from and against any and all claims, losses, damages, costs, and liabilities (including reasonable attorneys’ fees) arising out of or relating to the City’s entry, occupancy, or work within the Temporary Construction License Area, except to the extent caused by the gross negligence or willful misconduct of Developer.

ARTICLE 5. ONGOING DEVELOPER OBLIGATIONS

Section 5.1 Applicability.

The conditions and obligations set forth in this Article 5 shall apply throughout the Term of this Agreement and the Ground Lease, unless a different period of applicability is specified for a particular condition or obligation.

Section 5.2 Use.

(a) Developer hereby agrees that, for the entire Term of this Agreement and the Ground Lease (unless the affordability restrictions are otherwise modified pursuant to the terms of the Ground Lease), the Development will be used only for a community center and rent restricted housing with all units serving incomes at or below 80% Area Median Income(the “Affordability Requirements”).

(b) Developer hereby agrees to provide ongoing community services through its non-profit partner, EngAGE, Inc, a Californian nonprofit corporation, or another nonprofit reasonably acceptable to the City (the “Service Provider”), including but not limited to health and wellness, finance, art and culture. The community services will be offered, first and foremost, to the residents

free of charge and may be made available to the wider community from the dedicated ground floor service space of each building through regular activities, workshops and community events –. The Developer and/or Service Provider are responsible for paying for all costs associated with these ongoing community services.

(c) During the Term, the Developer shall not use any portion of the Property for any prohibited use set forth in the Ground Lease without the prior written consent of the City, which consent shall be granted or denied at the City’s sole and absolute discretion.

(d) The use requirements set forth in this Section shall be expressly incorporated into the Ground Lease and shall survive termination of this Agreement.

Section 5.3 Compliance with Covenants.

Developer agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, of the Development in first-class condition, repair and sanitary condition (and, as to landscaping, in a healthy condition), and all applicable laws, rules, ordinances, orders, and regulations of all federal, state, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials. Following the Closing Date, Developer shall comply with all standards and requirements for use, operation, maintenance, management and encumbrances of the Property and the Improvements.

Section 5.4 Taxes and Assessments.

(a) Developer shall pay all real and personal property taxes (to the extent that the Property is not fully exempt from property taxes), assessments, including the Heights Business Improvement Area Assessments detailed below, charges and any income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to any portion of the Property; provided, however, that Developer shall have the right to contest in good faith any such taxes, assessments, or charges. In the event Developer exercises its right to contest any tax, assessment, or charge against it, Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

(b) The Property is subject to the Heights Businesses Improvement Area (Heights BIA) (per Vancouver Municipal Code (VMC) Section 3.50). Developer will be assessed annually to cover the supplemental service costs for the public spaces in the Heights District (as described in VMC 3.50.030). Assessments will not be charged until the Grand Loop or the civic plaza have been constructed, and the Developer has executed the Ground Lease. This levy of assessment is made pursuant to VMC 3.50.040 to finance programs and services within the Heights District that are supplemental to services the City would ordinarily provide. Each property owner and ground lessee within the Heights Business Improvement Area will pay their proportionate share of the assessments into the Heights Business Improvement Area Fund established pursuant to VMC 3.50.050. Collection of Heights BIA special assessments shall be made in accordance with VMC

3.50.060, commencing in the calendar year in which the construction of the Grand Loop or the civic plaza have been completed and the Developer and the City have executed the Ground Lease, and no sooner than January 1, 2028. Developer will be assessed annually and billed semi-annually in an amount in accordance with VMC 3.50.040 at the then-current rate in effect at the time but projected to be \$0.30 per one lot square feet with annual increases at 3% or per the Portland-Hillsboro-Vancouver Consumer Price Index, whichever is greatest. The City will establish a separate business improvement area entity who will administer the Heights BIA and who will function as the governing body. The Developer will enter into a separate agreement with the Heights BIA entity and such agreement will dictate the administration of the Heights BIA in a similar manner to the terms described in VMC 3.50.

Section 5.5 Hazardous Materials.

(a) Covenants.

(1) No Hazardous Materials Activities. Developer hereby represents and warrants to the City that, at all times from and after the Closing Date, Developer shall not cause or permit any portion of the Property or the Improvements thereon to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials except for Hazardous Materials typically used in the construction and operation of the Development in compliance with Hazard Material Laws.

(2) Hazardous Materials Laws. Developer hereby represents and warrants to the City that, at all times from and after the Closing Date, Developer shall comply and cause the Property and the Improvements thereon, to comply with all applicable Hazardous Materials Laws.

(3) Notices. Developer hereby represents and warrants to the City that, at all times from and after the Closing Date, Developer shall immediately notify the City in writing of: (A) the discovery of any Hazardous Materials on or under the Property, particularly associated with the discovery or any new release of Hazardous Materials on or under the Property except for Hazardous Materials typically used in the construction and operation of the Development in compliance with Hazard Material Laws.; (B)reserved;; (C) any knowledge by Developer that the Property does not comply with any Hazardous Materials Laws; (D) any directives, corrective action orders, requests, claims or actions pending or threatened against Developer, the Property, the Improvements thereon, or the City by any Governmental Authorities or any third-party or entity relating to Hazardous Materials or pursuant to any Hazardous Materials Laws, or arising from claims of nuisance, or damage to property or personal injury relating to Hazardous Materials associated with the Property or the Improvements thereon (collectively “Hazardous Materials Claims”).

(4) Remedial Action. In response to the presence of any Hazardous Materials on, under or about the Property, or migrating from the Property, Developer shall immediately take, at Developer’s sole expense, all action to assess, investigate, remedy or remove the Hazardous Material, or take any action required by any Hazardous Materials

Laws or to comply with any directives, or corrective action orders, requests, from any Governmental Authority, or to comply with any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials Claims.

(b) Indemnity. At all times from and after the Closing Date, Developer shall indemnify, defend, and hold the City Indemnitees, harmless from and against any and all losses, costs, claims, damages, liability, and judgments, including reasonable attorney's fees, with the counsel of City's choice, and costs incurred to hire environmental consultants incurred by or asserted against any Indemnified Party in connection with, arising out of, in response to, or in any manner relating to the violation of any Hazardous Materials Law, any Release, or threatened Release of Hazardous Materials, any condition of pollution, contamination or Hazardous Materials-related nuisance on, under or from the Property occurring after the Closing Date due to Developer's operations, or arising out of or in response to any Hazardous Materials Claims except as directly caused by the City's willful misconduct or gross negligence. Developer shall have no obligation to indemnify the City for any pre-existing Hazardous Materials present on, under, or from the Property prior to the Closing Date. This obligation to indemnify and defend the City Indemnitees contained in this shall survive termination of this Agreement.

At all times from and after the Closing Date, the City shall indemnify, defend, and hold the Developer, harmless from and against any and all losses, costs, claims, damages, liability, and judgments, including reasonable attorney's fees, with the counsel of Developer's choice, and costs incurred to hire environmental consultants incurred by or asserted against the Developer in connection with, arising out of, in response to, or in any manner relating to the violation of any Hazardous Materials Law, any Release, or threatened Release of Hazardous Materials, any condition of pollution, contamination or Hazardous Materials-related nuisance on, under or from the Adjacent Parcel, or arising out of or in response to any Hazardous Materials Claims. This obligation to indemnify and defend the Developer contained in this shall survive termination of this DDA.

(c) No Limitation. Developer hereby acknowledges and agrees that Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under subsection (b) above, are in no way limited or otherwise affected by any information the City may have concerning the Development and/or the presence within the Development of any Hazardous Materials, whether the City obtained such information from Developer or from its own investigations.

Section 5.6 Insurance Requirements.

(a) Builders Risk. Until final completion of construction of the Improvements, the construction is at the risk of Developer. Developer shall (or shall cause its general contractor to) purchase and maintain Builders Risk insurance upon the work at the site to the full insurable value until completion of construction of the Improvements. Said insurance will insure against the perils customarily insured against in such Builders Risk policies, including flood (if the Development is located within the 100-year flood plain) for physical loss and damage. The insurance shall include damages, losses and expenses arising out of or resulting from any insured loss or incurred in the repair or replacement of any insured property.

(b) Property Insurance. Following completion of construction, Developer shall, at all times, maintain Cause of Loss – Special Form property insurance upon any buildings and facilities, including any permanent additions and improvements thereto, of which the Property form a part, in an amount equal to the full replacement cost thereof or with lesser limits as agreed by both City and Developer. Such insurance shall contain an agreed valuation provision in lieu of any co-insurance clause, an ordinance and law endorsement, debris removal coverage, business interruption coverage, extra expense coverage and a waiver of subrogation endorsement. Any and all payments from said policies or certificates of insurance, indemnity bonds and similar securities shall be made payable to and deposited with Developer or as required by its mortgagee(s). Further, and to the extent commercially available, all such policies shall contain a provision whereby the same cannot be canceled or modified unless City is given at least thirty (30) Days prior written notice of such cancellation or modification. Developer shall be responsible for the insurance premium and any deductible.

(c) Liability. Developer shall maintain, with financially sound and reputable insurers (see below), commercial general liability insurance written on an “occurrence” policy form with coverage at least as broad as ISO CGL form CG 0001, including contractual liability, against claims for bodily injury, property damage, and personal injury occurring on or about the Property or in any way relating to or arising out of Developer’s use or occupancy of the Property with minimum limits as provided in the Ground Lease, which amount shall be consistent with commercially reasonable insurance standards but in no event shall be less than the Minimum Coverage Amount set forth in the Ground Lease. Developer shall be named as an additional insured with coverage at least as broad as form ISO CG 2026 – Designated Person or Organization, without modification, affording coverage regardless of the additional insureds’ sole or concurrent negligence. Such insurance shall be endorsed to provide that the insurance shall be primary to and not contributory to any similar insurance carried by City and shall contain a severability of interest or cross liability clause.

(d) Business Interruption Insurance. Developer shall maintain business interruption insurance through the Term of the Ground Lease. Coverage will include payment to the City of the amount of annual Rent then payable to City for a period of at least six (6) months.

(e) Miscellaneous.

(1) Insurance Carrier Requirements. Developer’s insurance carrier(s), for all insurance referenced in the Ground Lease, shall be a reputable insurance company licensed to do business in the State of Washington. Developer’s insurance carrier(s) shall have a minimum A-VIII rating as determined by the then current edition of Best’s Insurance Reports published by A.M. Best Co.

(2) Certificates of Insurance. To establish that Developer’s insurance obligations have been met, Developer shall provide City with certificates of insurance prior to or at the Lease Term Commencement Date and renewals thereof prior to expiration of existing policies. Certificates of insurance shall have a copy of additional insured endorsement in favor of Lessor attached and, to the extent commercially available, provide that the policies are not subject to cancellation or material change without at least thirty

(30) Days advance written notice to City.

(3) Umbrella or Blanket Coverage. Developer shall be entitled to provide insurance coverage which it is obligated to carry pursuant to the terms of the Ground Lease under a blanket or umbrella insurance policy.

(4) Workers Comp and Employers Liability. At all times that Developer directly retains employees, Developer shall provide workers' compensation coverage, pursuant to statutory requirements. Developer further agrees to maintain Employers Liability Act ("ELA") or Stop Gap coverage as required by law of at least the Minimum Coverage Amount set forth in the Ground Lease.

(5) Automobile Liability. At all times that Developer owns at least one automobile, Developer shall provide Automobile Liability insurance with coverage at least as broad as Business Automobile Liability ISO form CA 0001, covering all owned, non-owned and hired automobiles brought on the Property, with coverage of at least the Minimum Coverage Amount set forth in the Ground Lease.

(6) Waiver of Subrogation. Notwithstanding anything in this Agreement to the contrary, neither party, nor its Related Parties is, nor, in case of Agreement, its assignees, shall be liable to the other party or to any insurance company (by way of subrogation or otherwise) insuring the other party, for any loss or damage to any building, structure or other property (whether real or personal) arising from any cause that (i) would be insured against under the terms of any property insurance required to be carried hereunder (or, with respect to City, which a reasonably prudent owner of real property similar in size, type, use, location, and quality as the Property would carry), or (ii) is insured against under the terms of any property insurance actually carried, regardless of whether the same is required hereunder, even though such loss or damage might have been occasioned by the negligence of such party or its Related Parties. Each party shall notify their respective insurance companies of this waiver of any rights of subrogation that such companies may have against Lessor or Lessee, as the case may be and shall obtain any necessary endorsement to avoid such waiver's invalidating the policy in whole or in part. Further, neither party nor the Related Parties shall be liable for: (1) any such damage caused by other lessees or persons in, upon or about the Property, or caused by operations in construction of any private, public or quasi-public work; or (2) consequential damages, including lost profits, of either party or any person claiming through or under Developer or City as applicable.

(7) Failure to Maintain. City shall have the right to force place any insurance required to be maintained by Developer hereunder if Developer fails to obtain same within thirty (30) Days of receipt of written notice of such failure, and the costs of such force placed insurance shall be an Additional Charge.

(f) City Insurance. City shall maintain in effect at all times insurance coverage consistent with the coverage customarily carried by ground lessors of property comparable in size, type, quality and location as the Property, including but not limited to (1) commercial general

liability insurance with limits of no less than Ten Million and 00/100 Dollars (\$10,000,000) per occurrence and annual aggregate, which may be comprised of both primary and excess layers, and (2) pollution liability insurance with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per claim and Two Million and 00/100 Dollars (\$2,000,000.00) aggregate. Such insurance carriers shall have an A.M. Best rating of not less than “A-” and Financial Size Category Rating of not less than “VIII” according to the latest edition of Best’s Key Rating Guide. Notwithstanding the foregoing, City self-insures consistent with the parameters set forth in Schedule 5.6. So long as City complies with Schedule 5.6, City shall be deemed to comply with this section.

Section 5.7 Audits.

Upon five (5) business days’ prior written notice from the City, the Developer shall make available for examination at reasonable intervals and during normal business hours to the City all books, accounts, reports, files, and other papers or property with respect to all matters covered by this Agreement, and shall permit the City to audit, examine, and make excerpts or transcripts from such records. The City may make audits of any conditions relating to this Agreement. The City agrees to treat information obtained from the Developer during any audit with confidentiality, subject to the City’s legal obligations including under the Public Records Act. Disclosure of information by the City shall not be prohibited if that disclosure is of information that is or becomes a matter of public record or public knowledge as a result of the closing of the transaction or from sources other than the City or its agents, employees, contractors, consultants or attorneys.

ARTICLE 6. RESTRICTIONS ON ASSIGNMENT

Section 6.1 Permitted Assignment.

Developer is permitted to partially or wholly assign this Agreement, and the rights of Developer in connection therewith to a “Developer’s Affiliate” without the prior written consent of City, provided that Developer shall be afforded no consideration for such assignment and provided that Developer delivers written notice no later than ten (10) days prior to the effective date of such assignment, which notice shall provide reasonable evidence to City that the assignee is a “Developer Affiliate” as defined herein. For purposes of this section, “Developer’s Affiliate” means (a) any entity that directly or indirectly controls, is controlled by, or is under common control with Developer; or (b) any entity at least a majority of whose economic interest is owned by Developer, with the term “control” meaning the power to direct the day-to-day management of such entity through voting rights, ownership, or contractual obligations.

Section 6.2 Prohibited Assignment.

Except as otherwise provided in this Article, Developer, shall not assign its rights under this Agreement without the prior written consent of City, which consent may be granted, denied or conditioned in City’s sole and absolute discretion. Notwithstanding the foregoing, no assignment or transfer shall relieve the assigning Party from its obligations under this Agreement unless expressly agreed to in writing by City.

ARTICLE 7.
DEFAULT AND REMEDIES

Section 7.1 General Applicability.

The provisions of this Article shall govern the Parties' remedies for breach or failure of this Agreement.

Section 7.2 No Fault of Parties Prior to Closing.

(a) Developer, despite good faith and diligent efforts, is unable to satisfy all of the conditions precedent to the City's obligation to ground lease the Property as set forth in Article 2 by the dates set forth in the Schedule of Performance.

(b) At the election of either party, this Agreement may be terminated by written notice to the other party. After termination, neither party shall have any rights against or liability to the other under this Agreement, except that the waiver and indemnification provisions of this Agreement that recite that they survive termination of the Term or of this Agreement shall survive such termination and remain in full force and effect.

(c) If Developer fails to secure funding by the date set forth in the Schedule of Performance the parties can agree to either extend the performance milestone dates in the Schedule of Performance allowing the Developer to secure funding through another funding cycle or can agree to terminate this Agreement. If the parties agree to the former, the Developer is awarded one more funding cycle for a total of two funding rounds to satisfy Section 2.4. If Developer fails to satisfy Section 2.4 on a second attempt, this Agreement may be terminated at the election of either party by written notice to the other party.

Section 7.3 Fault of City.

(a) Except as to events constituting a basis for termination under Section 7.2, the following events each constitute a City Event of Default (subject to any applicable notice and cure period) and a basis for Developer to take action against the City:

(1) The City, without good cause, fails to ground lease the Property to Developer within the time and in the manner set forth in this Agreement and Developer is otherwise entitled by this Agreement to such transaction; or

(2) The City breaches any other material provision of this Agreement.

(b) Upon the happening of any of the above-described events, Developer shall first notify the City in writing of its purported breach or failure, giving the City forty-five (45) days from receipt of such notice to cure or, if cure cannot be accomplished within forty-five (45) days, to commence to cure such breach, failure, or act. In the event the City does not then so cure within said forty-five (45) days, or if the breach or failure is of such a nature that it cannot be cured within

forty-five (45) days, the City fails to commence to cure within such forty-five (45) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then Developer shall be afforded the following exclusive remedies and shall be entitled to a return of the Deposit:

- (1) Terminating in writing this Agreement, however, that the waiver and indemnification provisions of this Agreement that recite that they survive termination of the Term or of this Agreement shall survive such termination and remain in full force and effect; or
- (2) Prosecuting an action for specific performance

Notwithstanding anything to the contrary set forth in this Agreement:

(i) If all conditions precedent to the City's obligation to enter into the Ground Lease under Article 2 have been waived or satisfied, and the City, despite its good faith efforts and for reasons beyond its reasonable control, is unable to ground lease the Property to Developer, then, in lieu of any other remedies, the Developer shall be entitled to reimbursement from the City of its reasonable, documented, out-of-pocket costs and expenses directly incurred in connection with the Development, including without limitation permitting fees, application fees, design fees, and consultant costs associated with the design and permitting of the Development, to the extent actually paid by Developer prior to termination.

(ii) If all such conditions have been waived or satisfied and the City, without good cause, willfully fails to ground lease the Property to Developer, then Developer may pursue any remedies available at law or in equity, including an award of monetary damages.

Section 7.4 Fault of Developer.

(a) Except as to events constituting a basis for termination under Section 7.2, the following events each constitute an Event of Default (subject to any applicable notice and cure period) and a basis for the City to take action against Developer:

- (1) Developer fails to exercise good faith and diligent efforts to satisfy, within the time set forth in the Schedule of Performance and in the manner set forth in Article 2 one or more of the conditions precedent to the City's obligation to ground lease the Property to Developer pursuant to this Agreement; or
- (2) Developer has satisfied all preconditions set forth in this Agreement to commencement of construction of the Improvements by the Closing Date but refuses to close on the Ground Lease within the time periods and under the terms set forth in Article 3; or
- (3) Developer constructs or attempts to construct the Improvements in

violation of Article 4; or

(4) Developer upon execution of a Ground Lease abandons or suspends construction of the Improvements prior to completion of all construction for a period of sixty (60) days after written notice by the City of such abandonment or suspension; or forth in Article 4; or

(5) Developer fails to substantially comply with any obligation or requirement set forth in this Agreement; or

(6) A transfer or assignment of this Agreement or the rights of Developer in connection therewith occurs, either voluntarily or involuntarily, in violation of Article 6;

(7) Any representation or warranty contained in this Agreement (including those listed in Section 8.18) or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement proves to have been incorrect in any material and adverse respect when made; or

(8) A court having jurisdiction shall have made or entered any decree or order: (i) adjudging Developer to be bankrupt or insolvent; (ii) approving as properly filed petition seeking its reorganization of Developer or seeking any arrangement for Developer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction; (iii) appointing a receiver, trustee, liquidator, or assignee of Developer in bankruptcy or insolvency or for any of their properties; or (iv) directing the winding up or liquidation of Developer, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection (9) as well; or Developer has admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive; or

(9) Developer shall have been dissolved or shall have voluntarily suspended its business; or

(10) Developer breaches any other material provision of this Agreement and any applicable cure period for such breach shall have expired.

(b) Upon the happening of any of the above-described events, the City shall first notify Developer in writing of its purported breach, failure or act above described, giving Developer in writing forty-five (45) days from receipt of such notice to cure, or, if cure cannot be accomplished within said forty-five (45) days, to commence to cure such breach, failure, or act. In the event Developer fails to cure within said forty-five (45) days, or if such breach is of a nature that it cannot be cured within forty-five (45) days, Developer fails to commence to cure within said forty-five (45) days and diligently complete such cure within a reasonable time thereafter but in no event

later than one hundred twenty (120) days, then the City shall be afforded all of its rights at law or in equity, including an award of monetary damages, and the right to exercise any or all of the following remedies:

(1) Termination of this Agreement by written notice to Developer; provided, however, that the City's remedies pursuant to this Article 7 or any other City Document and the waiver and indemnification provisions of this Agreement that recite that they survive termination of the Term or of this Agreement shall survive such termination and remain in full force and effect;

(2) Prosecuting an action for damages or specific performance; and

(3) If the uncured default occurs prior to the issuance of a Certificate of Occupancy for the Improvements, exercising the City's rights under the Construction Bonds; it being understood that the remedies secured by the Construction Bonds will automatically terminate after the issuance of a Certificate of Occupancy for the Improvements.

Section 7.9 Remedies Cumulative.

No right, power, or remedy given by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise. Neither the failure nor any delay to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 7.10 Waiver of Terms and Conditions.

No waiver of any default or breach by Developer hereunder shall be implied from any omission by the City to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by the City to or of any act by Developer requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under this Agreement nor shall it invalidate any act done pursuant to notice of default, or prejudice the City in the exercise of any right, power, or remedy hereunder or under this Agreement, unless in the exercise of any such right, power, or remedy all obligations of Developer to City are paid and discharged in full.

Section 7.11 Assignment of Plans.

If this Agreement is terminated pursuant to Section 7.2 or Section 7.4, and City requests copies of plans, specifications and/or third party reports obtained in connection with the Development, (collectively, the “Section 7.11 Documents”), Developer shall promptly deliver to the City, within ten (10) days of City’s request, copies the requested Section 7.11 Documents but only upon full reimbursement by the City of the costs incurred by Developer in connection with the preparation, acquisition, and development of the requested Section 7.11 Documents. To the maximum extent permitted under such documents or any applicable security instrument, the delivery of the Section 7.11 Documents shall be accompanied by an assignment in a the form of an assignment agreement approved by the City, of Developer’s right, title and interest in the Section 7.11 Documents; provided however, that that such documents shall be delivered strictly on an “AS-IS” basis, without representation or warranty of any kind, express or implied, as to their accuracy, completeness, validity, quality, or fitness for any particular purpose and any use of the Section 7.11 Documents by the City or any other person shall be without liability of any kind to Developer, its consultants or its employees as to the quality, validity, or usability of the Section 7.11 Documents. The City acknowledges and accepts the form CAD/BIM electronic file transfer agreements provided by the Architect and Civil Engineer, copies of which are attached as Schedule 7.11 (“Assignment of Plans Agreements”). The Parties agree to execute such forms or substantially similar documents at the time of file exchange, and to comply with the usage and indemnity conditions set forth therein.

Section 7.12 No Consequential Damages.

Notwithstanding anything to the contrary elsewhere in this agreement or provided for under any applicable law, neither City or Developer shall, in any event, be liable to the other party, either in contract, tort or otherwise, for any consequential, incidental, indirect, special or punitive damages from such other person, including loss of future revenue, income or profits, diminution of value or loss of business reputation or opportunity relating to the default or alleged breach hereof, whether or not the possibility of such damages has been disclosed to the other party in advance or could have been reasonably foreseen by such other party.

ARTICLE 8.
GENERAL PROVISIONS

Section 8.1 Notices, Demands and Communications.

Formal notices, demands, and communications between the City and Developer shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail/return receipt, or delivered personally, to the principal offices of the City and Developer as follows:

CITY:

City of Vancouver
PO Box 1995
Vancouver, WA 98668-1995
ATTN: Patrick Quinton, Economic Prosperity & Housing Director
Email: Patrick.Quinton@cityofvancouver.us

WITH A COPY TO:
City of Vancouver
PO Box 1995
Vancouver, WA 98668-1995
ATTN: Becky Rude, Deputy City Attorney
Email: Becky.Rude@cityofvancouver.us

DEVELOPER:

Vancouver Heights Family Development Co., LLC
208 SW 1st Avenue, Suite 240
Portland, OR 97204
ATTN: Stef Kondor
Email: SKondor@related.com

WITH A COPY TO:

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section 8.1. No party shall evade or refuse delivery of any notice.

Section 8.2 No Personal Liability.

No member, official, employee or agent of the City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Developer or successor or on any obligation under the terms of this Agreement.

No partner, director, employee or agent of the Developer shall be personally liable to City, or any successor in interest, in the event of any default or breach by the Developer or for any amount which may become due to City or successor or on any obligation under the terms of this Agreement.

Section 8.3 Conflict of Interest.

No member, official, employee or agent of the City shall make any decision relating to this Agreement which affects their personal interests or the interest of any corporation, partnership, association in which they are directly or indirectly interested in.

Section 8.4 Enforced Delay.

In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; protests, strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of god; acts of the public enemy; epidemics or pandemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Agreement); weather or soils conditions which, in the opinion of Developer's contractor, will necessitate delays; inability to secure necessary labor, materials or tools; acts of the other party; acts or failure to act of any public or governmental agency or entity (other than the acts or failure to act of the City); or any other causes (other than Developer's inability to obtain financing for the Improvements) beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within fifteen (15) days from the date the party seeking the extension first discovered the cause and such extension of time is not rejected in writing by the other party within fifteen (15) days of receipt of the notice. Times of performance under this Agreement may also be extended in writing by the City and Developer. In no event shall the cumulative delays exceed one hundred eighty (180) days, unless otherwise agreed to by the Parties in writing.

Section 8.5 Inspection of Books and Records.

Upon request, Developer shall permit the City to inspect at reasonable times during business hours and on a confidential basis those books, records and all other documents of Developer necessary to determine Developer's compliance with the terms of this Agreement. Developer also has the right at all reasonable times during business hours to inspect the public books, records and all other documentation of the City pertaining to its obligations under this Agreement.

Section 8.6 Title of Parts and Sections.

Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

Section 8.7 General Indemnification.

Each Party (the "Indemnifying Party") agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the other Party) the Other Party (the "Indemnified Party") from all suits, actions, claims, causes of action, administrative proceedings, arbitrations, enforcement actions, costs, demands, judgments and liens arising out of Indemnifying Party's performance or non-performance under this Agreement, or any other agreement executed pursuant to this Agreement, or arising out of acts or omissions of any of Indemnifying Party's contractors, subcontractors, or persons claiming under any of the aforesaid, except to the extent directly caused by the Indemnified Party's willful misconduct or gross negligence or breach of this Agreement. The provisions of this Section shall survive expiration of the Term or other termination of this Agreement and shall remain in full force and effect.

Section 8.8 Applicable Law.

This Agreement shall be interpreted under and pursuant to the laws of the State of Washington.

Section 8.9 Venue.

In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the venue for such action shall be the Superior Court of the County of Clark, or where otherwise appropriate, exclusively in the United States District Court, Western District of Washington

Section 8.10 No Brokers.

The City represents that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee except as agreed to in writing by the City and Developer. Developer represents, warrants, and agrees that it has a real estate broker that Developer is obligated to pay any real estate commission in connection with the transactions contemplated by this Agreement. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, Developer shall indemnify, defend with counsel of the City's choice, and hold the City harmless from all expense, loss, damage and claims, including the City's attorneys' fees, if necessary, arising out of the broker's or finder's claim, except as directly caused by the City's willful misconduct or gross negligence. The provisions of this Section shall survive expiration of the Term or other termination of this Agreement and shall remain in full force and effect.

Section 8.11 Severability.

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 8.12 Binding Upon Successors.

(a) This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the parties hereto except that there shall be no transfer of any interest by any of the parties hereto except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

(b) The covenants and restrictions set forth in this Agreement shall run with the land and shall bind all successors in title to the Property. However, on the termination of this

Agreement, such covenants and restrictions shall expire. Each and every contract, deed, or other instrument hereafter executed covering any portion of the Property shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed, or other instrument, unless the City expressly releases any portion of the Property from the requirements of this Agreement.

Section 8.13 Independent Parties; No Joint Venture.

Nothing in this Agreement is intended to or does establish the parties as partners, a joint venture, or principal and agent with one another.

Section 8.14 No Third-Party Beneficiaries.

No person or entity other than the City, Developer, and their permitted successors and assigns shall have any right of action under this Agreement

Section 8.15 Time of the Essence.

In all matters under this Agreement, the parties agree that time is of the essence.

Section 8.16 Action by the City.

Except as may be otherwise specifically provided in this Agreement or any another City Documents, whenever any approval, notice, direction, finding, consent, request, waiver, or other action by the City is required or permitted under this Agreement or any other City Documents, such action may be given, made, or taken by the City Manager, or by any person who shall have been designated in writing to Developer by the City Manager, without further approval by the City Council. Any such action shall be in writing in a form approved by the City Attorney.

Section 8.17 Discretion Retained by City.

The City's execution of this Agreement does not constitute approval by the City and in no way limits the discretion of the City in the permit and approval process in connection with development of the Improvements.

Section 8.18 Representations and Warranties.

(a) Developer Representations and Warranties. Developer hereby represents and warrants to the City as follows as of the Effective Date and throughout the Term, unless otherwise specified below:

(1) Organization. Developer is a duly organized, validly existing limited liability partnership, or such other entity approved by the City, and is in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(2) Authority of Developer. Developer has full power and authority to execute and deliver this Agreement, and all other documents and instruments to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(3) Authority of Persons Executing Documents. This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Developer, and all actions required under Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(4) Valid Binding Agreements. This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Developer enforceable against it in accordance with their respective terms.

(5) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on Developer, or any provision of the organizational documents of Developer, or will conflict with or constitute a breach of or a default under any agreement to which Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of Developer, other than liens permitted or established pursuant hereto.

(6) Compliance with Laws; Consents and Approvals. The construction of the Improvements will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(7) Pending Proceedings. Developer is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Developer, threatened against or affecting Developer, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Developer, materially affect Developer's ability to develop and operate the Improvements as required under this Agreement.

(8) Financial Statements. The financial statements of Developer and other financial data and information furnished by Developer to the City fairly present the information contained therein. As of the date of this Agreement, there has not been any adverse, material change in the financial condition of Developer from that shown by such financial statements and other data and information.

(9) Sufficient Funds. As of the Closing Date, the Developer will hold sufficient funds or binding commitments for sufficient funds to enter into the Ground Lease and complete the construction of the Improvements on the Property in accordance with this Agreement.

(10) No Reliance on Planned Public Improvements. Developer is entering into this Agreement for the purpose of constructing the Improvements and accessing the Ground Lease and is not relying on the City being required to deliver the Planned Public Improvements as a condition of Developer's performance hereunder. The Infrastructure Improvements Plan allows the Developer to complete the Improvements irrespective of the Planned Public Improvements.

(b) City's Representations and Warranties. City represents and warrants to Developer as follows:

(1) That this Agreement constitutes the valid and binding obligation of City and, upon approval by the Vancouver City Council, is enforceable against City in accordance with its terms, subject to bankruptcy, insolvency and similar laws affecting the enforcement of creditors' rights generally and general equitable principles.

(2) City is a Washington first-class charter city, validly formed and duly established as a Washington municipal corporation under the laws of the State of Washington.

(3) Pursuant to approval by the Vancouver City Council, City has full power and authority to enter into and perform this Agreement.

(4) The execution and delivery of this Agreement, delivery of money and all required documents, City's performance of this Agreement and the transaction contemplated hereby have been duly authorized by the requisite action on the part of City.

(5) Neither the execution nor delivery of this Agreement, nor the transaction contemplated by this Agreement will, to City's knowledge, conflict in any material respect or constitute a breach under any agreement or instrument by which City or the Property is bound.

(6) Except as disclosed in writing to Developer at or before Closing on Schedule 8.18(b)(6) (the "Litigation Disclosure") attached hereto, there are no pending actions, suits, arbitrations, claims or proceedings, at law or in equity, including without limitation, any action or proceeding for condemnation, affecting the Property or in which

City is, or, to the best of City's knowledge, will be, a party by reason of City's ownership of the Property.

Section 8.19 Complete Understanding of the Parties.

This Agreement and the attached exhibits constitute the entire understanding and agreement of the parties with respect to the matters set forth in this Agreement.

Section 8.20 Entry by the City.

Developer shall permit the City, through its officers, agents, or employees, at all reasonable times during business hours, and upon at least 48 hours prior written notice to Developer, to enter into the Development: (a) to inspect the work of construction to determine that the same is in conformity with the requirements of this Agreement; and (b) following completion of construction and subject to the rights of tenants under their leases and any applicable landlord tenant laws, including without limitation rights of tenants to receive prior written notice with respect to inspection of residential units, to inspect the ongoing operation and management of the Development to determine that the same is in conformance with the requirements of this Agreement. Developer reserves the right to have a representative of Developer accompany City during any inspection by City. Developer acknowledges that the City is under no obligation to supervise, inspect, or inform Developer of the progress of construction, or operations and Developer shall therefore not rely upon the City for that purpose. Any inspection by the City during the construction is entirely for its purposes in determining whether Developer is in compliance with this Agreement and is not for the purpose of determining or informing Developer of the quality or suitability of construction. Developer shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers.

Section 8.21 Amendments.

The Parties can amend this Agreement only by means of a writing executed by all Parties.

Section 8.22 Implementation Agreements.

The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Agreement. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance for those items covered in general terms under this Agreement. If and when, from time to time, the Parties find that mutually acceptable refinements or adjustments are desirable, such refinements or adjustments shall be accomplished through operating memoranda or implementation agreements approved by the Parties which, after execution shall be attached to this Agreement as addenda and become a part hereof. Operating memoranda or implementation agreements may be executed on the City's behalf by the City Manager, or the City Manager's designee. In the event a particular subject requires notice or hearing, such notice or hearing shall be appropriately given. Notwithstanding the foregoing, nothing in this Section shall be deemed to

require the City to consider any request by Developer for a waiver of any particular obligation as set forth herein.

Section 8.23 Multiple Originals; Counterparts.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 8.24 Force Majeure.

If, after the Effective Date of this Agreement, either Party is prevented or delayed from performing any act or discharging any obligation under this Agreement, excluding any monetary obligations, when and to the extent such failure or delay is caused by or results from acts beyond either Party's reasonable control, including, without limitation, pandemics, epidemics or similar global infection outbreak; fire, flood, earthquake or explosion; strikes or labor disputes; materials or equipment embargoes or blockades; acts of God; war, invasion, or hostile government actions, civil commotion or other casualty; legal actions attacking the validity of this Agreement, the City's authority to develop the Property, or the Developer's occupancy of the Property, or any other similar casualties beyond the reasonable control of the Party affected, except casualties directly or indirectly resulting from the acts or omissions of that Party ("Force Majeure"), the Party impacted shall be excused from performance of the act for the period of the delay, and the period for performance of the act shall be extended for a period equivalent to the period of the delay. If the party claiming excuse or delay of performance by Force Majeure fails to notify the other party and provide appropriate evidence of such qualifying event within thirty (30) days of commencement of the Force Majeure event, that party shall not be exempted from its liability for failure of performance or complete performance, or the necessity of delay in fulfilling its obligations. The party affected by Force Majeure shall make reasonable efforts to reduce the consequences of the Force Majeure and resume the performance of all relevant obligations as soon as possible after the termination of Force Majeure. If the party affected by Force Majeure fails to resume performance of the relevant obligations after the reasons for the temporary exemption from performance of the obligations due to Force Majeure cease, such party shall be liable to the other party in this regard.

[Remainder of Page Intentionally Blank; Signatures Follow]

IN WITNESS WHEREOF, the City and Developer have executed this Agreement in triplicate on or as of the Effective Date.

DEVELOPER:

VANCOUVER HEIGHTS FAMILY LIMITED PARTNERSHIP,
a Washington limited liability limited partnership

BY: RELATED/VANCOUVER HEIGHTS FAMILY DEVELOPMENT CO., LLC,
a California limited liability company, its general partner

By: _____
By: Ann Silverberg, President

STATE OF WASHINGTON)
) ss.
County of Clark)

On this ____ day of _____, 2025, before me personally appeared Ann Silverberg, to me known to be the President of the Related Vancouver Heights Family Development Co., LLC, a California limited liability company, as the General Partner of Vancouver Heights Family Limited Partnership, a Washington limited liability limited partnership, which has executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signature of Notary Public)

(Printed Name of Notary Public)

(Place of Residence of Notary Public)

(notary seal or stamp)

My Commission Expires: _____

CITY:

CITY OF VANCOUVER, WASHINGTON,
a Washington municipal corporation

By: _____

By: Lon Pluckhahn, City Manager

ATTEST:

By: _____

By: Natasha Ramras, City Clerk (or Designee)

APPROVED AS TO FORM:

By: _____

By: Nena Cook, City Attorney

STATE OF WASHINGTON)
) ss.
County of Clark)

On this ____ day of _____, 2025, before me personally appeared Lon Pluckhahn, to me known to be the City Manager of the City of Vancouver, a Washington municipal corporation, which has executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signature of Notary Public)

(Printed Name of Notary Public)

(Place of Residence of Notary Public)

(notary seal or stamp)

My Commission Expires: _____

EXHIBIT A-1

MAP OF SITE

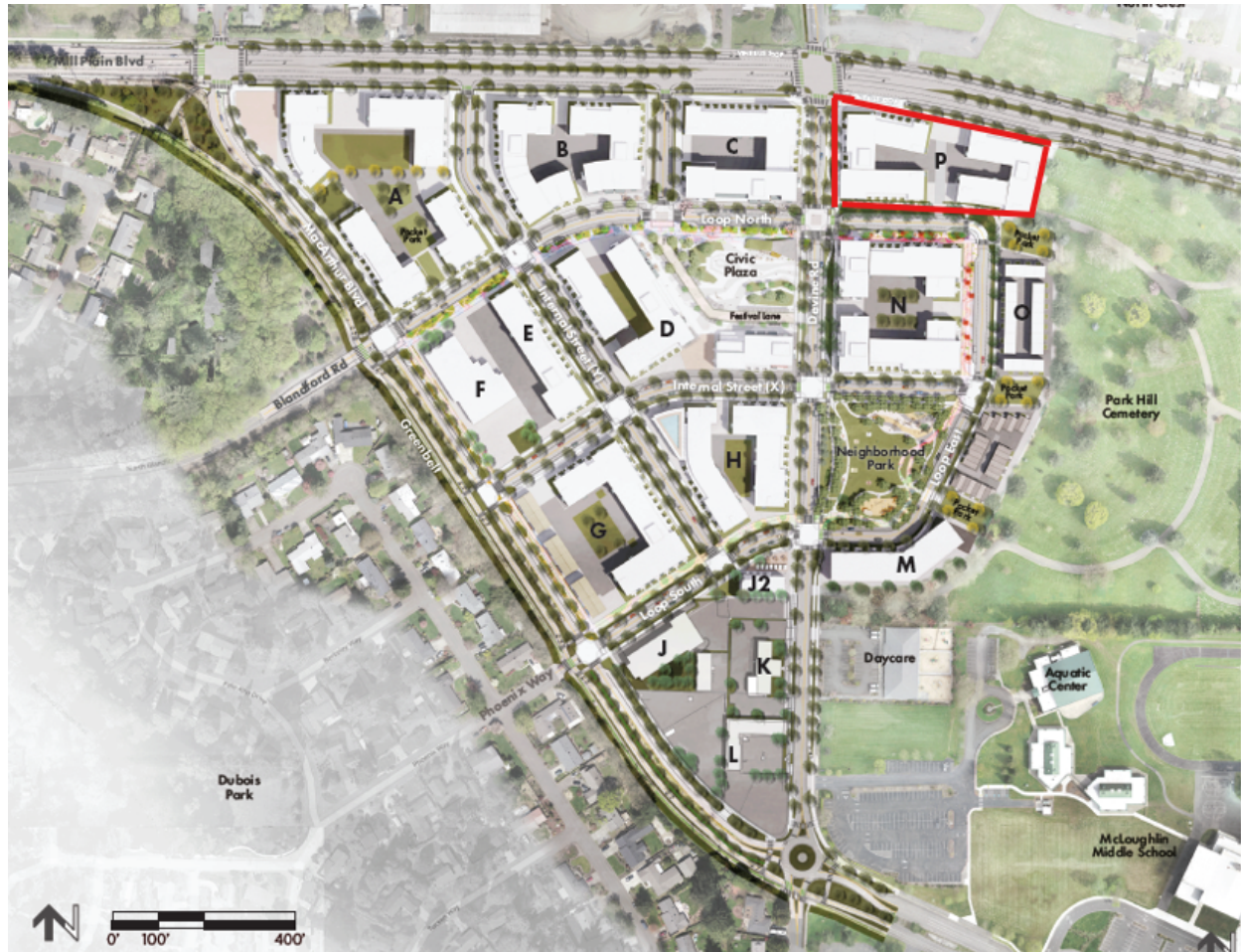


EXHIBIT A-2

LEGAL DESCRIPTION OF THE SITE P

City of Vancouver Property Description
Parcel "P"
Legal Description

Being a portion of that tract of land conveyed to the City of Vancouver as described in Auditor's File Number 5505392, Clark County Deed Records, and being a portion of the John Nye Donation Land Claim located in the Southwest one-quarter of Section 30, Township 2 North, Range 2 East of the Willamette Meridian, City of Vancouver, Clark County, Washington and being more particularly described as follows:

COMMENCING FROM the Northeast corner of Lot 3 of that Short Plat recorded in Book 2, Page 243, Short Plat Records of Clark County, Washington;

Thence North 01°30'02" East, along the westerly right-of-way line of Devine Road, 529.07 feet to a point;

Thence South 88°29'58" East, leaving said Westerly right-of-way line, 60.00 feet to a point on the Westerly line (also being a point on the easterly right-of-way line of Devine Road) of that parcel described in said Auditor's File Number 5505392;

Thence continuing South 88°29'58" East, leaving said Westerly line, 19.50 feet to an angle point on a proposed right-of-way line and the **TRUE POINT OF BEGINNING** of the herein described property;

Thence continuing South 88°29'58" East, along said proposed right-of-way line, 270.00 feet to an angle point;

Thence South 81°31'15" East, continuing along said proposed right-of-way line and its Easterly extension thereof, 155.73 feet to a point on the Easterly line of that parcel described in said Auditor's File Number 5505392;

Thence North 19°54'58" East, along the Easterly line of said parcel, 150.88 feet to a point on a proposed right-of-way line;

Thence North 75°53'25" West, along said proposed right-of-way line (said line being 64.50 feet southerly of when measured parallel with the centerline of E. Mill Plain Boulevard), 185.40 feet to the beginning of an 1868.50 foot radius curve to the left;

Thence continuing along said proposed right-of-way line and the arc of said 1868.50-foot radius curve to the left (said arc being 64.50 feet southerly of when measured parallel with the centerline of E. Mill Plain Boulevard), through a central angle of 08°42'14" (the chord of which

bears North 80°14'32" West, 283.12 feet) an arc distance of 283.39 feet to a point of non-tangency;

Thence South 45°23'00" West, continuing along said proposed right-of-way line, 16.05 feet to an angle point, said point being 19.50 feet Easterly of when measured perpendicular to the Easterly right-of-way line of Devine Road;

Thence South 01°30'02" West, continuing along said proposed right-of-way line (said line being 19.50 feet Easterly of and parallel with the Easterly right-of-way line of Devine Road), 193.80 feet to the **TRUE POINT OF BEGINNING** of the herein described property;

Contains in all 80,172 square feet, more or less.

Together with and/or subject to easements of record as applicable.

See Exhibit Map attached hereto

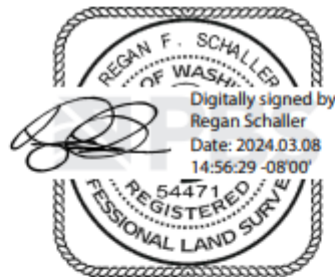


EXHIBIT A-3
DEPICTION OF PROPERTY

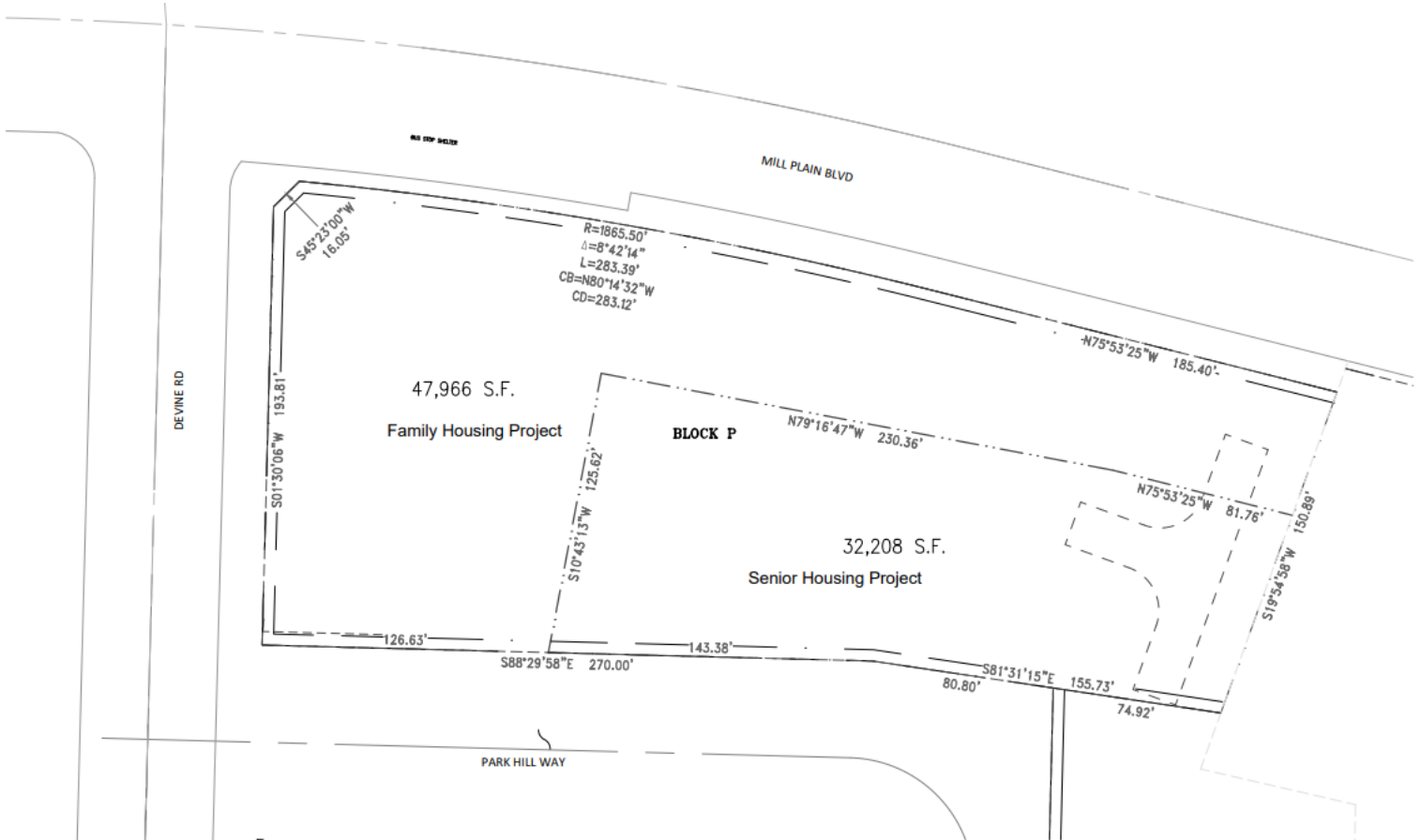


EXHIBIT B

SCHEDULE OF PERFORMANCE¹

Milestone	Date
Land Use Application	By or before June 31, 2026
Land Use Approval	By or before November 30, 2026
Permit Application	By or before December 31, 2026
Permit Approval	By or before May 31, 2027
Award of all funding	By or before March 31, 2027
Closing Date	By or before July 31, 2027
Obtain Construction Bonds	By or before June 30, 2027
Issuance of Certificate of Insurance	By or before June 30, 2027
Plat Recordation	By or before November 30, 2026
Commencement of Construction	By or before July 31, 2027
Completion of Construction	By or before July 31, 2029

¹ Dates can be extended by 12-months pursuant to section 7.2(d).

EXHIBIT C
SUMMARY OF SOURCES AND USES
[TO BE INSERTED]

EXHIBIT D

FORM OF MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Vancouver

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

MEMORANDUM OF LAND DISPOSITION AND DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT (the "Memorandum") is made as of [DATE], by and between the City of Vancouver, Washington, a Washington municipal corporation, and [ENTITY NAME] [ENTITY STATE AND TYPE]. The parties entered into that certain Land Disposition and Development Agreement, dated as of [DATE], as such may be amended from time to time (the "Agreement").

The Agreement imposes certain conditions (including but not limited to, construction requirements, operating and use restrictions and covenants, and transfer restrictions) on the real property described in Exhibit A attached hereto and incorporated herein (the "Property"). The Agreement is a public document and may be reviewed at the office of the City Clerk.

This Memorandum shall incorporate herein all of the terms and provisions of the Agreement as though fully set forth herein. This Memorandum is solely for recording purposes, and shall not be construed to alter, modify, amend or supplement the Agreement, of which this is a memorandum.

This Memorandum may be executed in counterparts, each of which shall be deemed an original.

[Remainder of Page Intentionally Blank; Signatures Follow]

IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed as of the date first above written.

DEVELOPER:

[ENTITY] [ENTITY STATE AND TYPE],

By: _____
[NAME/TITLE]

CITY:

CITY OF VANCOUVER, WASHINGTON,
a Washington municipal corporation

By: _____
By: Lon Pluckhahn, City Manager

ATTEST:

By: _____
By: Natasha Ramras, City Clerk (or Designee)

APPROVED AS TO FORM (CITY ATTORNEY'S OFFICE:

By: _____
Name: _____
Title: _____

[SIGNATURES MUST BE NOTARIZED]

**MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT
EXHIBIT A – LEGAL DESCRIPTION OF THE PROPERTY**

The land is situated in the City of Vancouver, County of Clark, State of Washington, and is described as follows:

[TO BE INSERTED]

EXHIBIT E

PLANNED PUBLIC IMPROVEMENTS



EXHIBIT F

GRAND LOOP IMPROVEMENTS

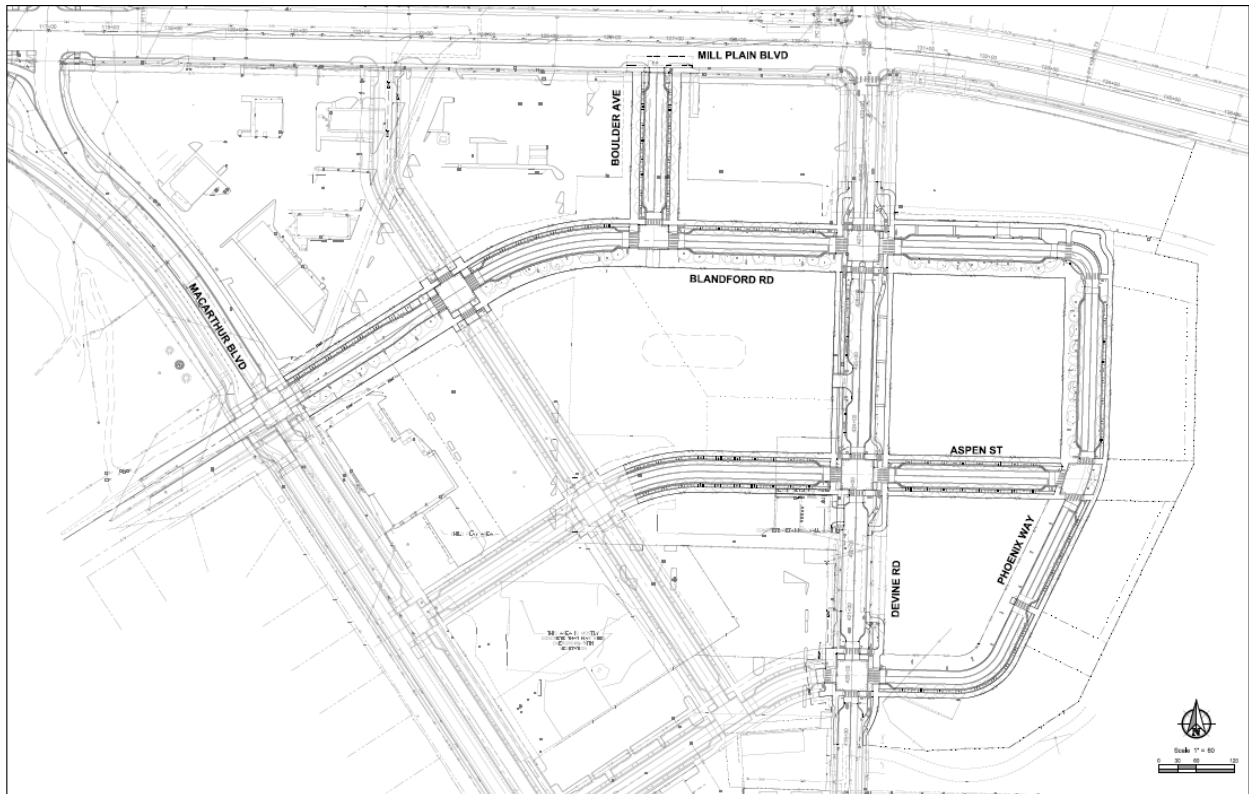


EXHIBIT G-1

INFRASTRUCTURE IMPROVEMENTS PLAN

This Infrastructure Improvements Plan sets forth the conditions and parameters under which Developer is required to undertake the design and construction of certain infrastructure improvements adjacent to and necessary for the development of Site P (“Infrastructure Work”). Subject to securing the federal RAISE grant funding, the City plans to construct the Infrastructure Work on behalf of the Developer to facilitate the development of affordable housing as detailed in Section 4.9(d).

1. Trigger for Implementation.

The City will keep the Developer updated on all progress related to the federal RAISE grant but if by June 1, 2026 the City has not secured the RAISE grant funds and/or uncertainty remains on when the City can complete the Grand Loop improvements the City must provide written notice to the Developer of such and Developer is required to implement this Infrastructure Improvements Plan. If such notice is not provided, or if the City confirms that it will proceed with the Grand Loop on a timeline consistent with the development of Site P, this Infrastructure Improvements Plan shall not apply.

2. Scope of Infrastructure Work.

If the Infrastructure Improvements Plan is implemented, the Developer is responsible for designing and constructing the following Infrastructure Work:

- Installation of wet and dry utility connections, including water, sewer, stormwater, power, and telecommunications, sufficient to serve Site P;
- Full street improvements on Park Hill Way along Site P's boundaries up to the curb on the other side of the street
- Temporary intersection improvements at Devine and Park Hill Way intersection as shown in black cross-hatched in Exhibit G-2.

3. Standard of Completion.

The Infrastructure Work shall be constructed to City standards and subject to City inspection and approval, and need not include decorative or enhanced public realm elements (e.g., decorative lighting, special paving, or complete Grand Loop features).

4. City Support and Coordination.

The City shall coordinate closely with Developer on permitting, inspections, and utility coordination. The City shall provide all necessary rights of entry, permits, and access to public rights-of-way under its control as well as copies of the City's design standards to enable Developer to complete the Infrastructure Work.

5. Reimbursement And Latecomers Agreement

Developer and City will enter into a latecomers agreement to document the reimbursement of Developer's costs associated with the construction of the half street improvements up to the curb on the south side of Park Hill Way adjacent to development block N as shown in red hatched in Exhibit G-2. Developer will be reimbursed for those costs by developer of block N upon development of that site.

6. No Obligation for Enhanced Improvements.

Developer shall not be responsible for the cost or construction of the City's Grand Loop improvements with the enhanced features exceeding the scope outlined in this Exhibit G-1. Any future enhancements desired by the City shall be constructed and funded by the City.

EXHIBIT G-2

DEPICTION OF INFRASTRUCTURE IMPROVEMENTS PLAN

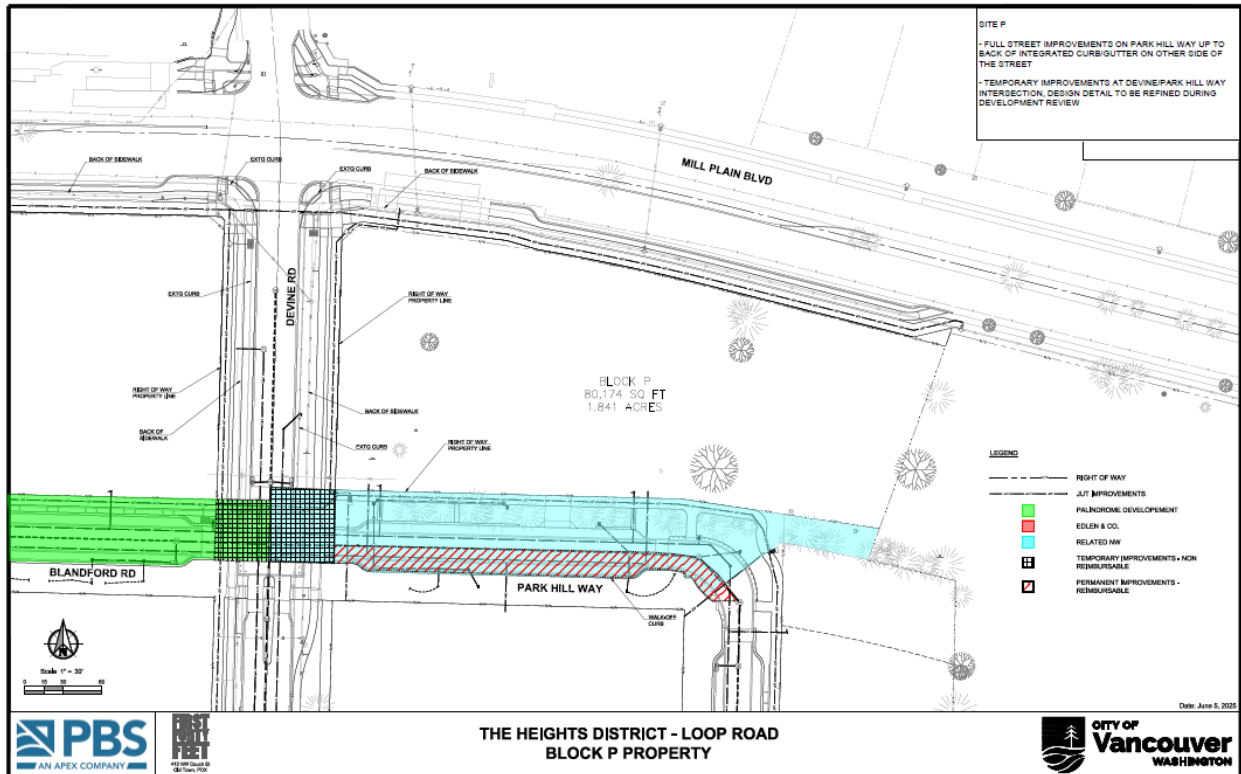


EXHIBIT G-3

FRONTAGE IMPROVEMENTS

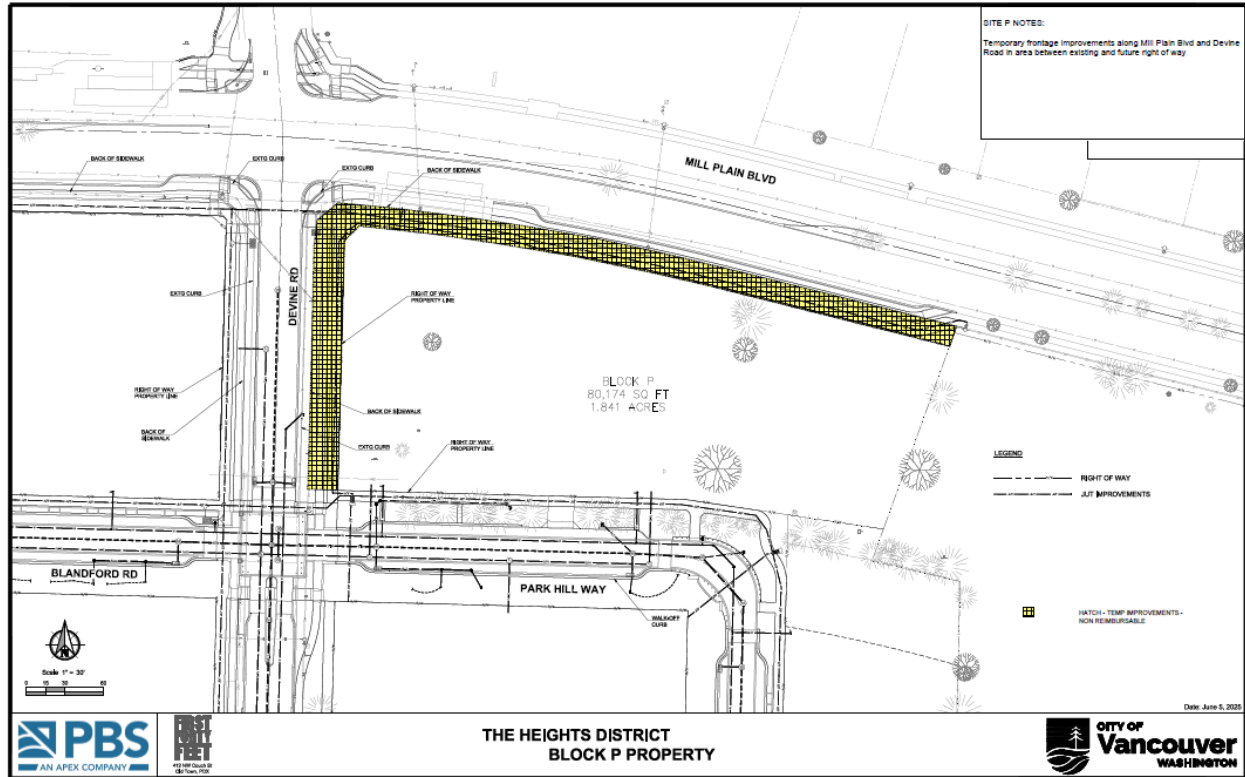
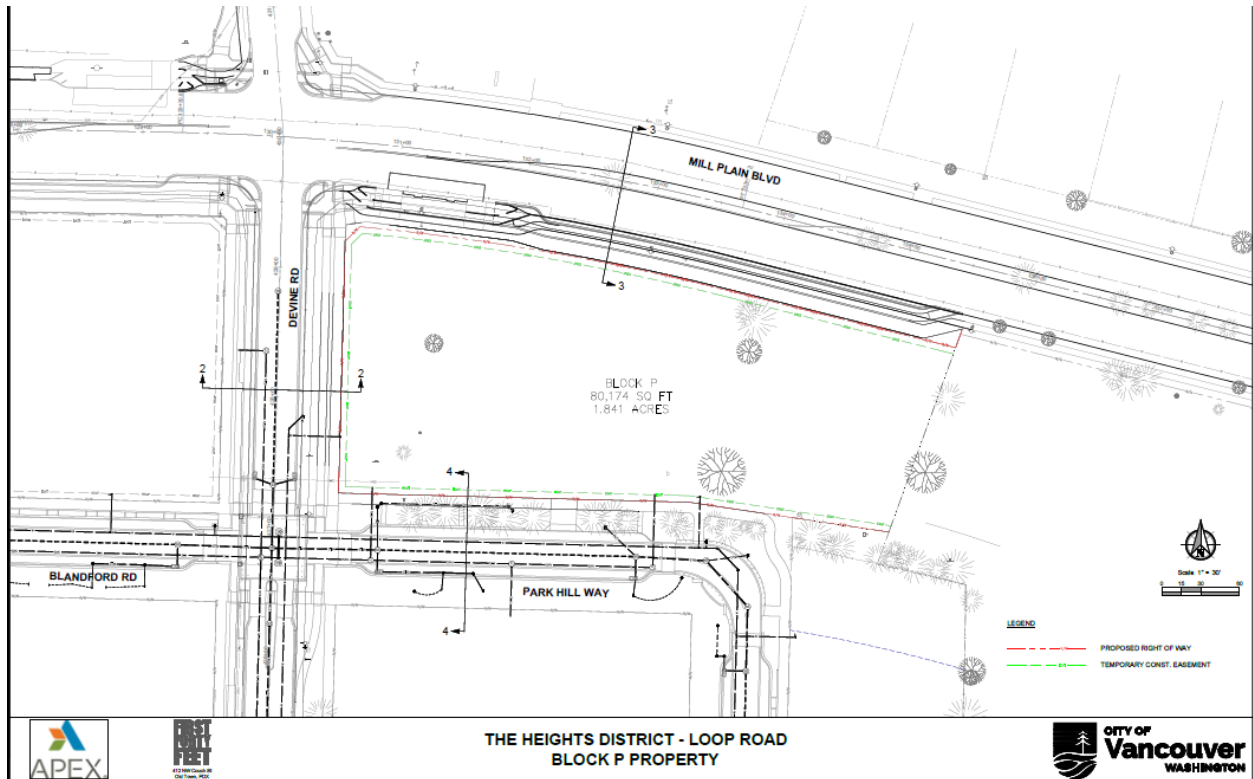


EXHIBIT H

TEMPORARY CONSTRUCTION LICENSE AREA DEPICTION



SCHEDULE 5.6

CITY SELF-INSURANCE CERTIFICATION LETTER



Risk and Safety Department

Re: Certification of Self-Insurance
To Whom It May Concern:

Please allow this letter to confirm the City of Vancouver is currently self-insured up to One Million Dollars (\$1,000,000 SIR) for bodily injury and/or property damage to third parties for accidents stemming from City operations. Additionally, the City purchases excess liability coverage beyond the \$1M SIR totaling Twenty Million Dollars (\$20,000,000). The current policy term is 10/1/2024 through 9/30/2025.

The City of Vancouver also carries an Inland Marine auto policy. Our current policy maintains limited liability of \$10,000,000 for City owned equipment and \$250,000 for leased or rented equipment. Our current auto policy is written by AGCS Marine Insurance Company, policy number MX193045147.

Furthermore, this letter is also to serve as confirmation that the City of Vancouver is currently self-insured up to Two Million Dollars (\$2,000,000 SIR) for Workers' Compensation. Additionally, the City purchases excess Workers' Compensation coverage beyond the \$2M SIR.

If additional information is required, please contact the undersigned at brent.waddle@cityofvancouver.us.

Regards,

A handwritten signature in black ink, appearing to read "Brent Waddle".

Brent Waddle
Risk and Safety Manager

P.O. Box 1995 | Vancouver, WA 98668-1995 | 360-487-8000 | TTY: 711 | cityofvancouver.us

SCHEDULE 7.11

ASSIGNMENT OF PLANS AGREEMENTS

- 7.11.1 Emerio Electronic File Release
- 7.11.2 Ground Workshop CAD Transfer Agreement
- 7.11.3 Hacker Architects CAD/BIM Transfer Agreement

SCHEDULE 8.18(B)(6)

LITIGATION DISCLOSURE

[TO BE UPDATED BY CITY AT CLOSING]

AN AMENDED AND RESTATED ORDINANCE in the public interest relating to construction for the public use of transportation and streets and sidewalks; declaring the public necessity for and providing for the acquisition by the City of Vancouver by eminent domain of certain property and a temporary construction easement, located in the City limits at 5300 MacArthur Boulevard and described herein, required to construct such public street improvements and related facilities within the City of Vancouver, Washington; taking final action to authorize condemnation of such property; authorizing the City Attorney to prosecute eminent domain proceedings and to stipulate in mitigation of damages; providing for payment of just compensation in exchange for such property; and providing for an immediate effective date.

Staff Report: 204-25

To: Mayor and City Council
From: City Manager
Date: October 6, 2025

Subject

Amended and Restated Condemnation Ordinance

Key Points

- City Council adopted Ordinance M-4464 on October 7, 2024 (the Ordinance), authorizing the City to use its statutory eminent domain authority and proceed with a condemnation action to acquire a portion of land and property rights from the parcel located at 5300 MacArthur Blvd to construct a public transportation infrastructure project, known as the Grand Loop in the Heights District.
- The design of the Grand Loop has progressed since the adoption of the Ordinance and the extent of a required temporary construction easement has since been defined.
- The Ordinance needs to be amended to include the temporary construction easement to allow the City to proceed with the condemnation action and lawfully construct the right of way.

Strategic Plan Alignment

Transportation and Mobility – a safe, future-ready and convenient transportation system

Housing and Human Needs – meeting basic needs and partnering with organizations to support the community

Present Situation

The City has completed the design and secured funding for the north and east sections of the Grand Loop, a new multimodal road and linear park that is an extension of North Blandford Drive and Phoenix Way and loops around the Tower Mall Redevelopment Area in the Heights District Plan area. The Grand Loop provides public access and utilities to the development parcels and is a priority piece of public transportation infrastructure to support development and facilitate the implementation of the Heights District Plan.

As evidenced by City Council Resolution M-4222 adopted May 15, 2023, the City Council finds that the Grand Loop project presents a public use, necessity and convenience for the City of Vancouver.

City Council adopted Ordinance M-4464 on October 7, 2024 (the Ordinance), authorizing the City to use its statutory eminent domain authority to acquire a portion of land and property rights from the parcel located at 5300 MacArthur Blvd (Subject Property) to construct the Grand Loop. Despite the City's extensive efforts to reach agreement with the property owner, no agreement has been reached, and the City has filed a condemnation suit. The City continues to advance the condemnation process to acquire the property and property rights by eminent domain, and an amendment to the Ordinance is required to proceed with the legal action. Since the adoption of the Ordinance, the design of the Grand Loop has been refined and the necessity of a temporary construction easement (TCE) has been realized.

A Temporary Construction Easement (TCE) is a standard property right that allows contractors to access private property for construction purposes. It is limited in duration and only remains in effect for the length of the construction period.

In this case, the TCE encompasses approximately 3,925 square feet of land located on both the north and south sides of the Subject Property. All impacts to the Subject Property are limited to those described herein, and property access will be maintained throughout construction.

Any damage to the Subject Property and required mitigation resulting from construction activities will be the City's responsibility and expense.

The property owner will receive compensation from the City for the TCE and any anticipated impacts to the Subject Property. This compensation is based on the land valuation determined by a certified appraiser and in accordance with Washington State Department of Transportation (WSDOT) guidelines.

The City will continue to negotiate in good faith with the Subject Property owner for contractual acquisition of the property and temporary construction easement rights.

Advantage(s)

By adopting the amended condemnation ordinance, this allows the City the option to exercise its statutory eminent domain authority and proceed with the condemnation action to obtain a court order for the City to purchase the property necessary for right-of-way and advance the public transportation infrastructure project to construction.

Challenge(s)

The condemnation ordinance authorizes the City to engage in legal action for property acquisition. The outcome of any legal action cannot be predicted with certainty.

Budget Impact

Compensation consisting of \$402,000 was offered as the purchase price for the land acquisition based on the certified appraisal of the land. Compensation for the TCE is based on the length of time the City needs to access the property during construction in accordance with WSDOT requirements. Therefore, compensation for the TCE would be no more than \$27,475. The City has calculated the total costs for the land acquisition, TCE and associated expenses amount to \$430,225, which is included in the approved project budget for the Heights.

Prior Council Review

- City Council Ordinance M-4464 adopted October 7, 2024

- City Council Resolution M-4222 adopted May 15, 2023

Action Requested

On Monday, October 6, 2025, advance the ordinance, setting the date for the second reading and public hearing for October 13, 2025.

Staff Contact

Ryan Lopossa, Streets and Transportation Manager, Amy Stewart, Real Estate Project Manager, Hassan Abdalla, Engineering Manager, ryan.lopossa@cityofvancouver.us, amy.stewart@cityofvancouver.us, hassan.abdalla@cityofvancouver.us

Attachments:

1. Presentation
2. Amended and Restated Condemnation Ordinance
3. Ordinance Exhibit A
4. Ordinance Exhibits B and C
5. Ordinance Exhibit D
6. Property Owner Notice
7. Ordinance M-4464



Amended Condemnation Ordinance

Ryan Lopossa

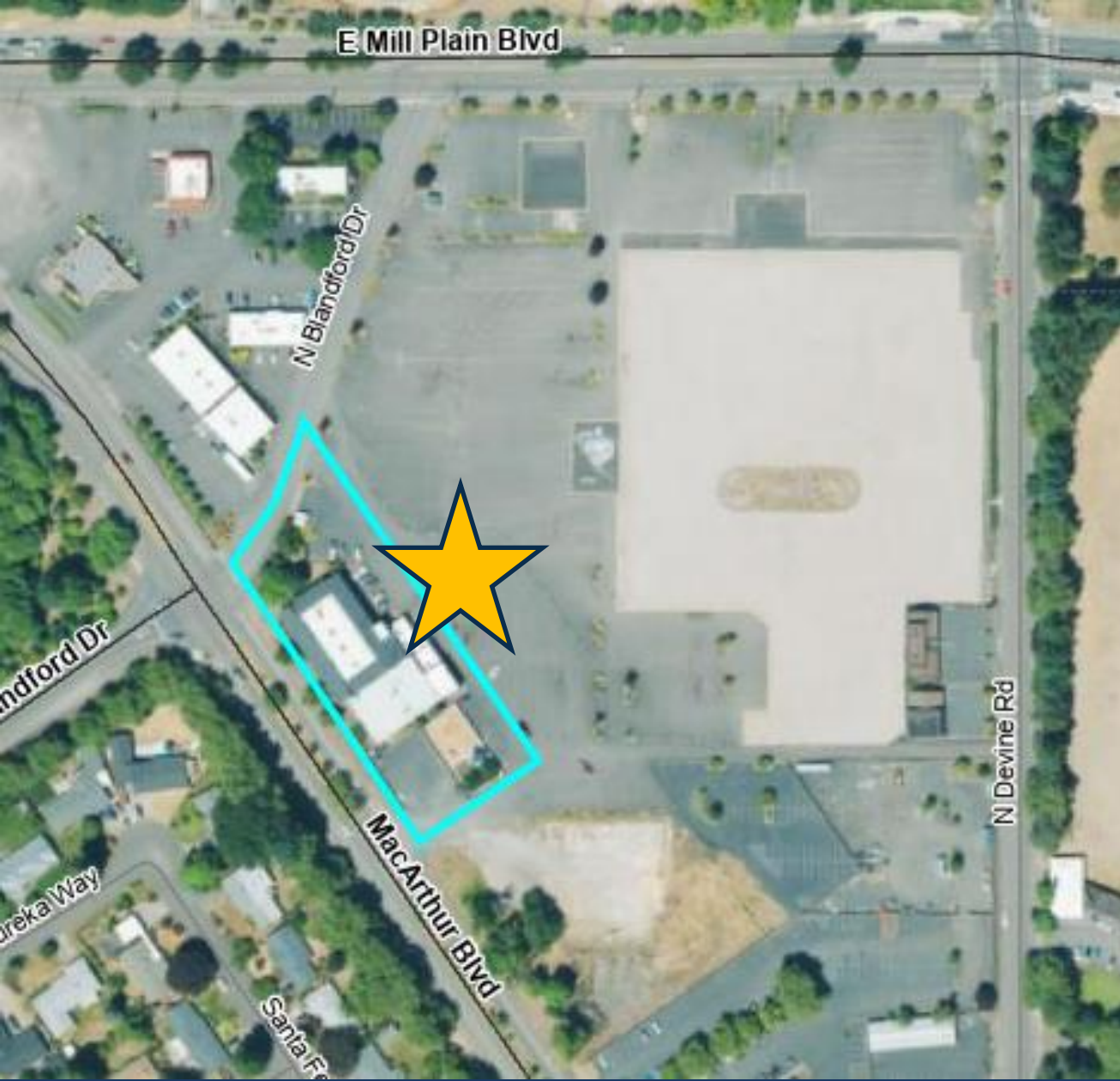
Transportation Manager

October 13, 2025



Agenda

- Key points
- Recap of right of way acquisition needs
- Review negotiations history
- Review amendment to condemnation ordinance
- Next steps
- Q&A



Key Points

- Private property acquisition required for Grand Loop Road construction
- Existing parking easement over former mall property needs to be extinguished to proceed with development
- Council adopted condemnation ordinance 10/7/24
- Grand Loop design defined extent of required Temporary Construction Easement (TCE)
- Condemnation ordinance needs amended to include TCE to exercise City's eminent domain authority

Right of way Acquisition

- Property acquisition includes a total of 15,125 sq ft
- \$402,000 offered as purchase price based on certified appraisal
- Offer includes termination of existing easement and offer of replacement parking easement
- City Council adopted condemnation ordinance 10/7/24

Negotiations History

Fall 2023-Summer 2024	Fall 2024	Winter 2024-Summer 2025	Fall 2025
• City issued offer • Negotiation attempts	• City Council adoption of condemnation ordinance	• Advancement of Grand Loop design • Continued negotiation attempts	• Ordinance amendment • Continue negotiations with property owner





Amendment to Condemnation Ordinance

- Road design advanced since condemnation ordinance adoption
- Extent of required Temporary Construction Easement (TCE) now defined
- Ordinance requires amendment to include TCE



Temporary Construction Easement

TCE is standard property access right for construction purposes

- TCE encompasses 3,925 square feet located on north and south sides of property
- Property owner will be compensated for TCE in addition to land compensation
- TCE included as part of ongoing negotiations with the property owner
- Any damage to property will be repaired at City's expense



Next Steps

City Council	Civil Court	Civil Court
Adopt amended ordinance following a public hearing establishing that property and TCE are required to fulfill a necessary public use	Petition in Clark County Superior Court to establish payment of “just compensation” in exchange for taking property	Obtain judgment fixing compensation and final decree transferring title after payment is made

Continue to negotiate settlement



Action Requested

Approve Amended and Restated Ordinance declaring the public use and necessity for, and requires the acquisition by eminent domain for just compensation of portions of real property, property rights and temporary construction easement located at 5300 MacArthur Blvd to construct street improvements; and authorizing City Attorney to prosecute eminent domain proceedings



Discussion



Thank You



www.beheardvancouver.org/heights-district-plan



10/06/25 (Date of First Reading)
10/13/25 (Date of Public Hearing)

ORDINANCE NO. _____

AN AMENDED AND RESTATED ORDINANCE in the public interest relating to construction for the public use of transportation and streets and sidewalks; declaring the public necessity for and providing for the acquisition by the City of Vancouver by eminent domain of certain property and a temporary construction easement, located in the City limits at 5300 MacArthur Boulevard and described herein, required to construct such public street improvements and related facilities within the City of Vancouver, Washington; taking final action to authorize condemnation of such property; authorizing the City Attorney to prosecute eminent domain proceedings and to stipulate in mitigation of damages; providing for payment of just compensation in exchange for such property; and providing for an immediate effective date.

WHEREAS, the Washington State Constitution (Article 1, Section 16) and Title 8 of the Revised Code of Washington authorizes the City of Vancouver to acquire private property necessary for public use following due process of law and payment of just compensation and such legal proceedings to purchase private property are called condemnation actions; and

WHEREAS, the City's eminent domain authority includes acquisition of real property in fee title as well as interests in real property, such as easements; and

WHEREAS, the City of Vancouver Public Works Department has developed right-of way plans, approved by City Council on May 15, 2023 through Resolution M-4222, that indicate which portions of parcels and property interests are necessary to be acquired for the Heights District Plan Grand Loop road public transportation infrastructure construction project; and

WHEREAS, the City has negotiated in good faith as to the amount of compensation due to the property owner and has based its offer compensation package, including a perpetual parking

ORDINANCE - 1

easement, and land valuation price for the acquisition and temporary construction easement on a licensed MAI certified appraiser; and

WHEREAS, the statutorily required notice has been provided to the property owner pursuant to RCW 8.12.005 and RCW 8.25.290 of the City's intent to take final action authorizing condemnation of the subject property; and

WHEREAS, good faith negotiations have not yet resulted in an agreement between the parties; and

WHEREAS, the City Council is exercising its independent discretion to take final action authorizing the City to commence a condemnation proceeding and confirming the City's right to acquire such property as in the public interest and necessary to fulfill a public purpose, and to settle the amount of just compensation owing to the property owner.

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

Section 1. Findings.

A. *Public Interest*. As described in Staff Report ____-25 and as evidenced by City Council Resolution M-4222 adopted May 15, 2023, the Vancouver City Council finds that the public interest necessitates the acquisition of certain portions of a parcel of real property and a construction easement located within the right of way of N. Blandford Drive east of MacArthur Boulevard, for a public use in the construction of certain public transportation improvements and related facilities ("Project").

B. *Subject Property*. The property ("Subject Property") to be taken pursuant to this Ordinance includes the fee interest in portions of one parcel listed at Exhibit A, and specifically described in the attached Exhibits B and C and a temporary construction easement described in the

attached Exhibit D. Acquisition of the Subject Property and the temporary construction easement is necessary for completion of the Project.

C. Prior Good Faith Negotiation. The City of Vancouver, by and through its Economic Prosperity and Housing Department and Public Works Department, has actively worked in good faith to acquire the Subject Property by negotiated sale. Honest differences of opinion exist between the City of Vancouver and the owner of the Subject Property.

E. Public Use. The City of Vancouver's Public Works Department has a Six-Year Transportation Improvement Program, which indicates that the Project is in the public interest and the Subject Property must be acquired for the construction of these street and utility infrastructure improvements within the Heights District Plan (Tower Mall Redevelopment) area.

F. Necessity for Subject Property. Due to the public need to construct the public transportation infrastructure improvements to accommodate future growth in the Heights District Plan area, development and traffic demands, the public use and public interest necessitates the City to initiate the acquisition of the Subject Property and payment of just compensation by exercise of the power of eminent domain through a condemnation proceeding. Acquisition of the Subject Property will not change its current use and enjoyment nor require any tenant relocation.

G. Location. The Subject Property to be acquired by negotiated sale or by eminent domain proceedings authorized by this Ordinance are within the city limits of the City of Vancouver, Clark County, Washington and are necessary for construction of the Project.

Section 2. Payment of Compensation The Subject Property to be acquired and the temporary construction easement to be obtained pursuant to the City's power of eminent domain shall be acquired and exercised only after just compensation has been made or paid into the Clark County Superior Court registry or special account for the benefit of the owner or owners in

a manner provided by law.

Section 3. Source of Funds. All just compensation, fees, and costs associated with the acquisition by eminent domain proceedings of the Subject Property, shall be paid from the City of Vancouver Transportation Project fund, and if this fund were insufficient, from the City's general fund or other funds then available for such purposes.

Section 4. Authority of Attorney. The City Attorney is hereby authorized to begin and prosecute the actions and proceedings in the manner provided by law to condemn, take, damage and appropriate all lands and other properties as necessary to carry out the provisions of this Ordinance. The City Attorney is also authorized to enter into stipulations for the purpose of minimizing damages, including all stipulations authorized by Chapter 8.25 RCW.

Section 5. Effective Date. As discussed in Staff Report ____-25, and the findings of this Ordinance, there is an immediate need to initiate eminent domain proceedings to acquire the Subject Property to accommodate the Project; an emergency is hereby declared; and this Ordinance shall go into effect immediately upon final passage.

DATE OF FINAL PASSAGE by the Vancouver City Council: October ____, 2025.

ORDINANCE - 4

SIGNED this _____ day of _____ October 2025.

Anne McEnery-Ogle, Mayor

Attest:

Natasha Ramras, City Clerk

Approved as to form:

Nena Cook, City Attorney

SUMMARY

ORDINANCE NO. _____

AN AMENDED AND RESTATED ORDINANCE in the public interest relating to construction for the public use of transportation and streets and sidewalks; declaring the public necessity for and providing for the acquisition by the City of Vancouver by eminent domain of certain property and construction easement rights, located in the City limits at 5300 MacArthur Boulevard and described herein, required to construct such public street improvements and related facilities within the City of Vancouver, Washington; taking final action to authorize condemnation of such property; authorizing the City Attorney to prosecute eminent domain proceedings and to stipulate in mitigation of damages; providing for payment of just compensation in exchange for such property; and providing for an immediate effective date.

The full text of this ordinance will be mailed upon request. Contact public records staff at (360) 487-8480, citypdr@cityofvancouver.us, or via [Public Records Request -The City of Vancouver, WA](#).

EXHIBIT A

ABC Homes Property Legal Description

That portion of Section 30, Township 2 North, Range 2 East of the Willamette Meridian, Clark County, Washington, lying within the John Nye Donation Land Claim, described as follows:

BEGINNING at a concrete monument set at the intersection of the center lines of Macarthur Boulevard and Blandford Drive as described in Exhibit "A" under Exception, attached to Quit Claim Deed to Tower Mall L.L.C. recorded December 02, 2003 under Auditor's File No. 3761409 records of said County; thence North 34°29'58" East 53.89 feet to a point on the North line of Macarthur Boulevard; thence South 34°42'02" East 10.70 feet along the North line of said Macarthur Boulevard to the most Southerly corner of the Exception as described in said Quit Claim Deed and the TRUE POINT OF BEGINNING; thence continuing along said North line South 34°42'02" East 391.76 feet to Westerly corner of T. B. Bruno property as conveyed by deed recorded in Volume "D-34", Page 174, under Auditor's File No. G 213157 and being that portion of Short Plat Lot 2 recorded in Book 2 of Short Plats at Page 243, records of said County; thence along the Northerly line of said T. B. Bruno property and said Lot 2 North 55°17'58" East 157.14 feet; thence parallel with the North line of said Macarthur Boulevard North 34°42'02" West 476.77 feet to a point on the Southerly line of above described Exception; thence along said Southerly line South 19°02'58" West 98.34 feet; thence continuing along said line South 36°48'28" West 62.89 feet; thence continuing along said line South 34°29'58" West 19.46 feet to the TRUE POINT OF BEGINNING.



EXHIBIT B

ABC Homes LLC Right-of-Way acquisition Legal Description

Being a portion of Parcel II conveyed to ABC Homes, LLC, a Washington Limited Liability company as described in Auditor's File Number 4807596, Clark County Deed Records, and being a portion of the John Nye Donation Land Claim located in the Southwest one-quarter of Section 30, Township 2 North, Range 2 East of the Willamette Meridian, City of Vancouver, Clark County, Washington and being more particularly described as follows:

COMMENCING FROM the Westerly most corner of Lot 2 of that Short Plat recorded in Book 2, Page 243, Short Plat Records of Clark County, Washington;

Thence North $33^{\circ}07'37''$ West, along the Westerly line of said Parcel II (also being the easterly right-of-way line of MacArthur Boulevard), 339.25 feet to the TRUE POINT OF BEGINNING of the herein described right-of-way acquisition;

Thence continuing North $33^{\circ}07'37''$ West, along the Westerly line of said Parcel II, 52.58 feet to the Westerly-most corner of said Parcel II;

Thence North $36^{\circ}11'55''$ East, along the Northerly line of said parcel II, 19.29 feet to an angle point;

Thence North $38^{\circ}22'29''$ East, continuing along said Northerly line, 62.86 feet to an angle point;

Thence North $20^{\circ}37'49''$ East, continuing along said Northerly line, 98.36 feet to the Northmost corner of said Parcel II;

Thence South $33^{\circ}07'37''$ East, along the Easterly line of said Parcel II (said line being parallel with, when measured perpendicular to the Westerly line of said Parcel II), 139.90 feet to a point;

Thence South $57^{\circ}45'27''$ West, 157.01 feet to the TRUE POINT OF BEGINNING.

Contains in all 13,935 square feet, more or less.

Together with and/or subject to easements of record as applicable.

See Exhibit Map attached hereto



3.17.25

EXHIBIT MAP

RIGHT-OF-WAY ACQUISITION

MARCH 14, 2025

PIN 37910148
OWNER: CITY OF
VANCOUVER

FUTURE ROW
ACQUISITION

FUTURE ROW
ACQUISITION

PIN 37910109/
149/150/151
OWNER: TOWER MALL
PROPERTIES LLC

MACARTHUR
BLVD

N38°22'29"E 62.86'
FUTURE ROW
ACQUISITION

N36°11'55"E
19.29'

N33°07'37"W
52.58'

N20°37'49"E
98.36'

S33°07'37"E
139.90'

RIGHT-OF-WAY
ACQUISITION
13,935 SQ. FT.
0.320 ACRES

AF #4807596

PIN 37910163/986035736
OWNER: ABC HOMES LLC

S57°45'27"W
157.01'

POINT OF
BEGINNING

50'

N33°07'37"W 339.25'

POINT OF
COMMENCEMENT
WEST CORNER
LOT 2- SP 2/243

2

Scale 1" = 60'



DRAWN BY: RFS

SCALE: 1"=60'

3.14.25

CHECKED BY: TLG

JOB NO.: 71595.000

SHEET 1 OF 1



EXHIBIT C

ABC Homes LLC right-of-way acquisition Legal Description

Being a portion of Parcel II conveyed to ABC Homes, LLC, a Washington Limited Liability company as described in Auditor's File Number 4807596, Clark County Deed Records, and being a portion of the John Nye Donation Land Claim located in the Southwest one-quarter of Section 30, Township 2 North, Range 2 East of the Willamette Meridian, City of Vancouver, Clark County, Washington and being more particularly described as follows:

BEGINNING AT the Westerly most corner of Lot 2 of that Short Plat recorded in Book 2, Page 243, Short Plat Records of Clark County, Washington and the **TRUE POINT OF BEGINNING** of the herein described right-of-way acquisition;

Thence North $33^{\circ}07'37''$ West, along the Westerly line of said Parcel II (also being the easterly right-of-way line of MacArthur Boulevard), 7.92 feet to a point;

Thence North $56^{\circ}57'33''$ East, leaving said Westerly line, 156.99 feet to a point on the Easterly line of said Parcel II;

Thence South $33^{\circ}07'37''$ East, along said Easterly line (said line being parallel with, when measured perpendicular to the Westerly line of said Parcel II), 7.60 feet to the northern most corner of Lot 2 of said Short Plat recorded in Book 2, Page 243;

Thence South $56^{\circ}50'44''$ West, 156.99 feet to the TRUE POINT OF BEGINNING.

Contains in all 1,218 square feet, more or less.

Together with and/or subject to easements of record as applicable.

See Exhibit Map attached hereto



3.17.25

EXHIBIT MAP

RIGHT-OF-WAY ACQUISITION

MARCH 14, 2025

AF #4807596
PIN 37910163/986035736
OWNER: ABC HOMES LLC

VARIES

FUTURE ROW
ACQUISITION

RIGHT-OF-WAY
ACQUISITION
1,218 SQ. FT.
0.027 ACRES

N56°57'33"E 156.99'
S56°50'44"W 156.99'

NORTHERLY LINE
LOT 2

N33°07'37"W
7.92'

POINT OF
BEGINNING
WESTERN
MOST CORNER
LOT 2- SP 2/243

50'

PIN 37910132
OWNER: DAWK
ENTERPRISES LLC

2

"SHORT PLAT
2-243"

Scale 1" = 40'



DRAWN BY: RFS

SCALE: 1"=40'

3.14.25

CHECKED BY: TLG

JOB NO.: 71595.000

SHEET 1 OF 1



ABC Homes LLC
Temporary Construction Easement
Legal Description

Being a portion of Parcel II conveyed to ABC Homes, LLC, a Washington Limited Liability company as described in Auditor's File Number 4807596, Clark County Deed Records, and being a portion of the John Nye Donation Land Claim located in the Southwest one-quarter of Section 30, Township 2 North, Range 2 East of the Willamette Meridian, City of Vancouver, Clark County, Washington and being more particularly described as follows:

COMMENCING FROM the Westerly most corner of Lot 2 of that Short Plat recorded in Book 2, Page 243, Short Plat Records of Clark County, Washington;

Thence North 33°07'37" West, along the Westerly line of said Parcel II (also being the easterly right-of-way line of MacArthur Boulevard), 7.92 feet to a proposed right-of-way line and the **TRUE POINT OF BEGINNING "A"** of the herein described temporary construction easement;

Thence continuing North 33°07'37" West, along the Westerly line of said Parcel II, 5.00 feet to a point;

Thence North 56°57'33" East, 156.99 feet to the East line of said Parcel II;

Thence South 33°07'37" East, along said East line, 5.00 feet to the aforementioned proposed right-of-way line;

Thence South 56°57'33" West, along said proposed right-of-way line, 156.99 feet to the **TRUE POINT OF BEGINNING "A"**.

Contains 785 square feet, more or less.

ALSO INCLUDING:

COMMENCING FROM the Westerly most corner of Lot 2 of that Short Plat recorded in Book 2, Page 243, Short Plat Records of Clark County, Washington;

Thence North 33°07'37" West, along the Westerly line of said Parcel II (also being the easterly right-of-way line of MacArthur Boulevard), 319.25 feet to the **TRUE POINT OF BEGINNING "B"** of the herein described temporary construction easement;

Thence continuing North 33°07'37" West, along the Westerly line of said Parcel II, 20.00 feet to a proposed right-of-way line;

Thence North 57°45'27" East, along the said proposed right-of-way line, 157.01 feet to the East line of said Parcel II;

Thence South 33°07'37" East, along said East line, 20.00 feet to a point;

Thence South 57°45'27" West, 157.01 feet to the **TRUE POINT OF BEGINNING "B"**.

Contains 3,140 square feet, more or less.

Together with and/or subject to easements of record as applicable.

See Exhibit Map attached hereto



9.5.25

EXHIBIT MAP

TEMPORARY CONSTRUCTION EASEMENT

SEPTEMBER 3, 2025

AF #4807596

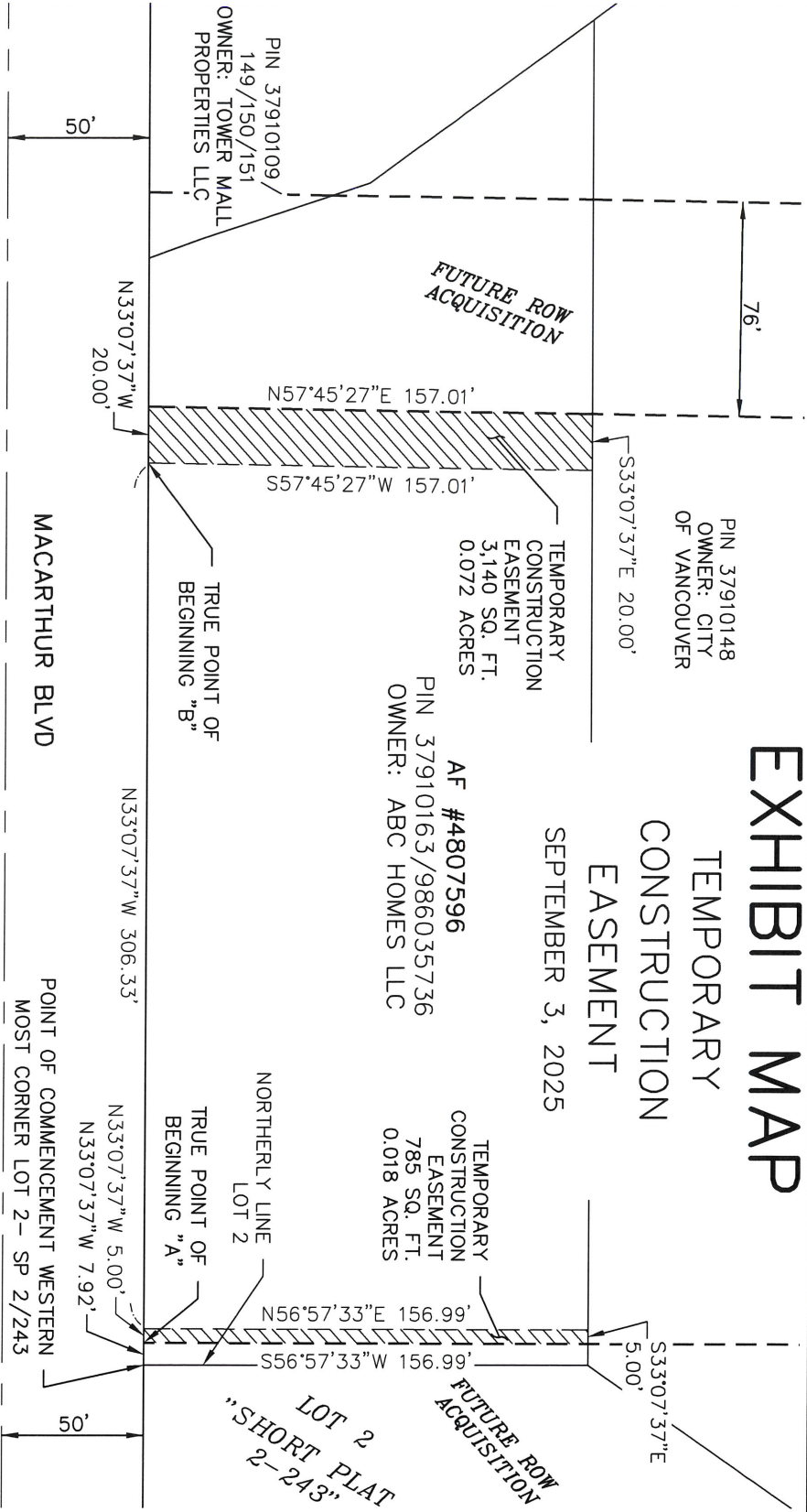
PIN 37910163/986035736
OWNER: ABC HOMES LLC

TEMPORARY
CONSTRUCTION
EASEMENT
785 SQ. FT.
0.018 ACRES

TEMPORARY
CONSTRUCTION
EASEMENT
3,140 SQ. FT.
0.072 ACRES

PIN 37910148
OWNER: CITY
OF VANCOUVER

PIN 37910109/
149/150/151
OWNER: TOWER MALL
PROPERTIES LLC



Scale 1" = 60'



PBS

DRAWN BY: RFS	SCALE: 1"=60'	9.3.25
CHECKED BY: TLG	JOB NO.: 71595.000	SHEET 1 OF 1



ABC Homes, LLC, a Washington limited liability company
Attn: Justin Lawrence
1914 NW 112th Circle
Vancouver WA 98685

September 16, 2025

**RE: Notice of Final Action on Condemnation of Real Property Located at 5300
MacArthur Blvd, Vancouver WA 98661**

Dear Mr. Lawrence:

This letter is being sent via certified mail pursuant to RCW 8.25.290 to notify you that the Vancouver City Council will consider taking action on an Amended and Restated Ordinance to authorize, through the exercise of the City's eminent domain authority under Chapter 8.12 RCW, the acquisition of certain real property with the street address 5300 MacArthur Boulevard, Vancouver, WA 98661 as necessary to a public use and required for public benefit by condemnation upon payment of just compensation.

The proposed Amended and Restated Ordinance amends the ordinance City Council adopted on October 7, 2024, a copy of which is attached hereto, regarding the condemnation of real property identified in Exhibit B and the condemnation of property rights identified in Exhibit C (the "Property") to include a temporary construction easement identified in Exhibit D. The Amended and Restated Ordinance regarding the condemnation of the Property will be read for the first time by the City

Council on **Monday, October 6, 2025 at 6:30pm** during a public meeting held at City Hall, Council Chambers, 415 W 6th Street (2nd Floor), Vancouver, Washington, 98668.

If approved and set for hearing after the first reading, **City Council will hold a public hearing and take final action to adopt the Ordinance, authorizing commencement of legal proceedings to condemn the Property, on Monday, October 13, 2025 at 6:30pm,** during a public meeting held at City Hall, Council Chambers, 415 West 6th Street (2nd Floor), Vancouver, Washington, 98668.

You are encouraged to attend and comment on the proposed action.

Sincerely,

A handwritten signature in cursive script, appearing to read "P. Quinton".

Patrick Quinton, Economic Development Director
Economic Prosperity and Housing

cc: Lon Pluckhahn, City Manager
Nena Cook, City Attorney
Ryan Lopossa, Transportation Division Manager, Public Works

09/16/24

10/07/24

ORDINANCE NO. M-4464

AN ORDINANCE in the public interest relating to construction for the public use of transportation and streets and sidewalks; declaring the public necessity for and providing for the acquisition by the City of Vancouver by eminent domain of certain property, located in the City limits at 5300 MacArthur Boulevard and described herein, required to construct such public street improvements and related facilities within the City of Vancouver, Washington; taking final action to authorize condemnation of such property; authorizing the City Attorney to prosecute eminent domain proceedings and to stipulate in mitigation of damages; providing for payment of just compensation in exchange for such property; and providing for an immediate effective date.

WHEREAS, the Washington State Constitution (Article 1, Section 16) and Title 8 of the Revised Code of Washington authorizes the City of Vancouver to acquire private property necessary for public use following due process of law and payment of just compensation and such legal proceedings to purchase private property are called condemnation actions; and

WHEREAS, the City's eminent domain authority includes acquisition of real property in fee title as well as interests in real property, such as easements; and

WHEREAS, the City of Vancouver Public Works Department has developed right-of way plans, approved by City Council on May 15, 2023 through Resolution M-4222, that indicate which portions of parcels and property interests are necessary to be acquired for the Heights District Plan Grand Loop road public transportation infrastructure construction project; and

WHEREAS, the City has negotiated in good faith as to the amount of compensation due to the property owner and has based its offer compensation package, including a perpetual parking

easement, and land valuation price on a licensed MAI certified appraiser; and

WHEREAS, the statutorily required notice has been provided to the property owner pursuant to RCW 8.12.005 and RCW 8.25.290 of the City's intent to take final action authorizing condemnation of the subject property; and

WHEREAS, good faith negotiations have not yet resulted in an agreement between the parties; and

WHEREAS, the City Council is exercising its independent discretion to take final action authorizing the City to commence a condemnation proceeding and confirming the City's right to acquire such property as in the public interest and necessary to fulfill a public purpose, and to settle the amount of just compensation owing to the property owner.

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

Section 1. Findings.

A. Public Interest. As described in Staff Report 191-24 and as evidenced by City Council Resolution M-4222 adopted May 15, 2023, the Vancouver City Council finds that the public interest necessitates the acquisition of certain portions of a parcel of real property and an easement located within the right of way of N. Blandford Drive east of MacArthur Boulevard, for a public use in the construction of certain public transportation improvements and related facilities ("Project").

B. Subject Property. The property ("Subject Property") to be taken pursuant to this Ordinance includes the fee interest in portions of one parcel listed at Exhibit "A", as well as replacement and relocation of certain permanent parking easement interest. The Subject Property to be taken for the Project is specifically described in the attached Exhibits B and C. Acquisition of the

ORDINANCE - 2

Subject Property is necessary to completion of the Project.

C. Prior Good Faith Negotiation. The City of Vancouver, by and through its Economic Prosperity and Housing Department and Public Works Department, has actively worked in good faith to acquire the Subject Property by negotiated sale. Honest differences of opinion exist between the City of Vancouver and the owner of the Subject Property.

E. Public Use. The City of Vancouver's Public Works Department has a Six-Year Transportation Improvement Program, which indicates that the Project is in the public interest and the Subject Property must be acquired for the construction of these street and utility infrastructure improvements within the Heights District Plan (Tower Mall Redevelopment) area.

F. Necessity for Subject Property. Due to the public need to construct the public transportation infrastructure improvements to accommodate future growth in the Heights District Plan area, development and traffic demands, the public use and public interest necessitates the City to initiate the acquisition of the Subject Property and payment of just compensation by exercise of the power of eminent domain through a condemnation proceeding. Acquisition of the Subject Property will not change its current use and enjoyment nor require any tenant relocation.

G. Location. The Subject Property to be acquired by negotiated sale or by eminent domain proceedings authorized by this Ordinance are within the city limits of the City of Vancouver, Clark County, Washington and are necessary for construction of the Project.

Section 2. Payment of Compensation The Subject Property to be acquired pursuant to the City's power of eminent domain shall be acquired only after just compensation has been made or paid into the Clark County Superior Court registry or special account for the benefit of the owner or owners in a manner provided by law.

Section 3. Source of Funds. All just compensation, fees, and costs associated with the

ORDINANCE - 3

acquisition by eminent domain proceedings of the Subject Property, shall be paid from the City of Vancouver Transportation Project fund, and if this fund were insufficient, from the City's general fund or other funds then available for such purposes.

Section 4. Authority of Attorney. The City Attorney is hereby authorized to begin and prosecute the actions and proceedings in the manner provided by law to condemn, take, damage and appropriate all lands and other properties as necessary to carry out the provisions of this Ordinance. The City Attorney is also authorized to enter into stipulations for the purpose of minimizing damages, including all stipulations authorized by Chapter 8.25 RCW.

Section 5. Effective Date. As discussed in Staff Report 191-24, and the findings of this Ordinance, there is an immediate need to initiate eminent domain proceedings to acquire the Subject Property to accommodate the Project; an emergency is hereby declared; and this Ordinance shall go into effect immediately upon final passage.

DATE OF FINAL PASSAGE by the Vancouver City Council: October 7, 2024.

SIGNED this 7th day of October 2024.

DocuSigned by:

 6C89D9089EC5424...
 Anne McEnery-Ogle, Mayor

Attest:
 DocuSigned by:

 493E940414AE4BD...
 Natasha Ramras, City Clerk

Approved as to form:
 DocuSigned by:

 9A7DC2E31F694A2...
 Jonathan Young, City Attorney

SUMMARY

ORDINANCE NO. M-4464

AN ORDINANCE in the public interest relating to construction for the public use of transportation and streets and sidewalks; declaring the public necessity for and providing for the acquisition by the City of Vancouver by eminent domain of certain property, located in the City limits at 5300 MacArthur Boulevard and described herein, required to construct such public street improvements and related facilities within the City of Vancouver, Washington; taking final action to authorize condemnation of such property; authorizing the City Attorney to prosecute eminent domain proceedings and to stipulate in mitigation of damages; providing for payment of just compensation in exchange for such property; and providing for an immediate effective date.

The full text of this ordinance will be mailed upon request. Contact public records staff at (360) 487-8480, citypdr@cityofvancouver.us, or via [Public Records Request -The City of Vancouver, WA](#).

EXHIBIT B
Right-of-Way Acquisition Legal Descriptions
and Maps



ABC Homes LLC right-of-way acquisition
Legal Description

Being a portion of Parcel II conveyed to ABC Homes, LLC, a Washington Limited Liability company as described in Auditor's File Number 4807596, Clark County Deed Records, and being a portion of the John Nye Donation Land Claim located in the Southwest one-quarter of Section 30, Township 2 North, Range 2 East of the Willamette Meridian, City of Vancouver, Clark County, Washington and being more particularly described as follows:

COMMENCING FROM the Westerly most corner of Lot 2 of that Short Plat recorded in Book 2, Page 243, Short Plat Records of Clark County, Washington;

Thence North 33°07'37" West, along the Westerly line of said Parcel II (also being the easterly right-of-way line of MacArthur Boulevard), 391.83 feet to the Westerly-most corner of said Parcel II;

Thence North 36°11'55" East, along the Northerly line of said Parcel II, 19.29 feet to an angle point;

Thence North 38°22'29" East, continuing along said Northerly line, 49.24 feet to the TRUE POINT OF BEGINNING of the herein described property acquisition;

Thence North 38°22'29" East, continuing along said Northerly line, 13.62 feet to an angle point;

Thence North 20°37'49" East, continuing along said Northerly line, 98.36 feet to the Northerly most corner of said Parcel II;

Thence South 33°07'37" East, along the Easterly line of said Parcel II (said line being parallel with, when measured perpendicular to the Westerly line of said Parcel II), 63.89 feet to a point;

Thence South 57°45'27" West, along the Northerly line of a proposed right-of-way acquisition, 92.25 feet to the TRUE POINT OF BEGINNING.

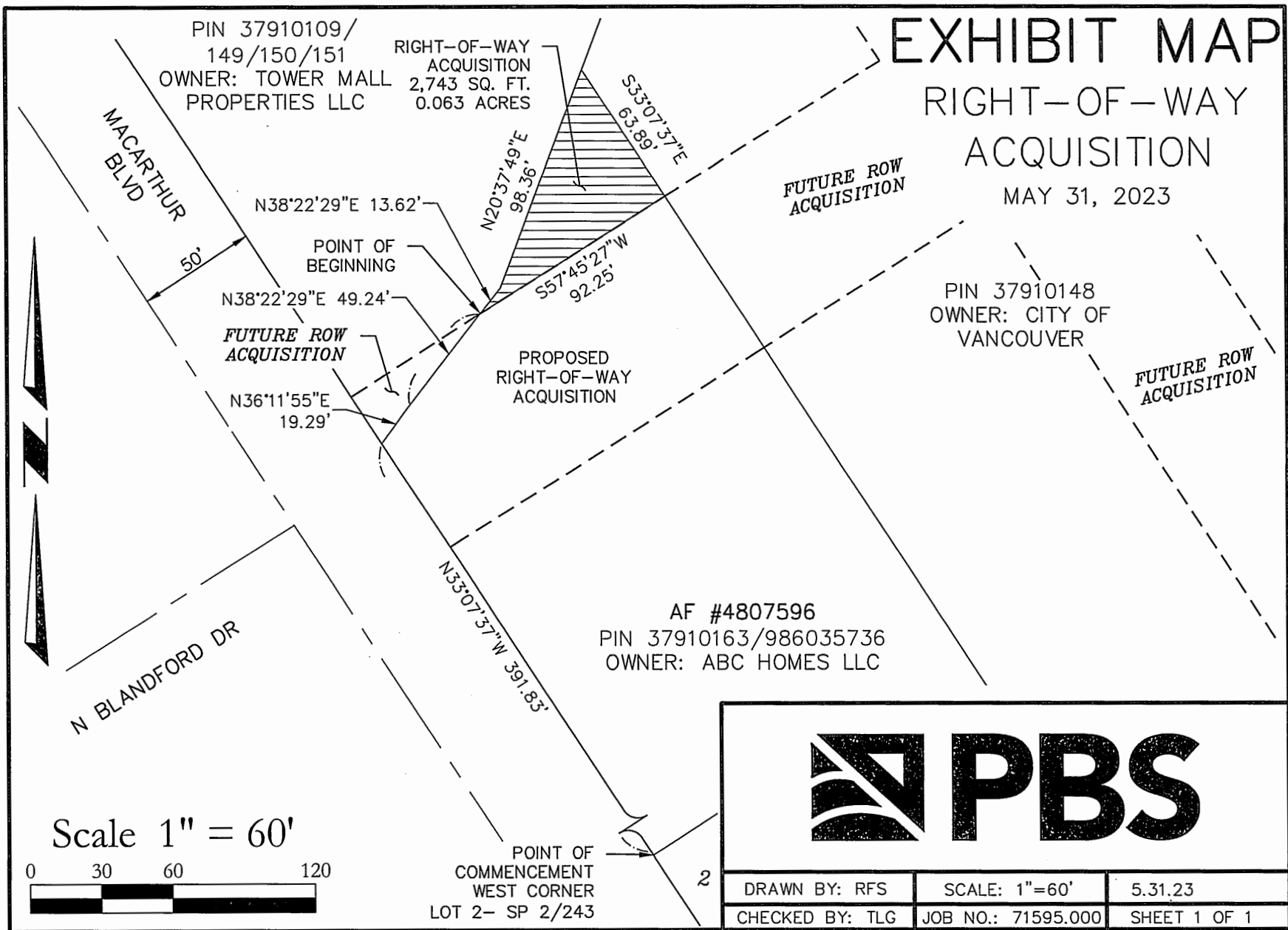
Contains in all 2,743 square feet, more or less.

Together with and/or subject to easements of record as applicable.

See Exhibit Map attached hereto



5.31.23





ABC Homes LLC right-of-way acquisition
Legal Description

Being a portion of Parcel II conveyed to ABC Homes, LLC, a Washington Limited Liability company as described in Auditor's File Number 4807596, Clark County Deed Records, and being a portion of the John Nye Donation Land Claim located in the Southwest one-quarter of Section 30, Township 2 North, Range 2 East of the Willamette Meridian, City of Vancouver, Clark County, Washington and being more particularly described as follows:

COMMENCING FROM the Westerly most corner of Lot 2 of that Short Plat recorded in Book 2, Page 243, Short Plat Records of Clark County, Washington;

Thence North $33^{\circ}07'37''$ West, along the Westerly line of said Parcel II (also being the easterly right-of-way line of MacArthur Boulevard), 339.25 feet to the TRUE POINT OF BEGINNING of the herein described right-of-way acquisition;

Thence continuing North $33^{\circ}07'37''$ West, along the Westerly line of said Parcel II, 52.58 feet to the Westerly-most corner of said Parcel II;

Thence North $36^{\circ}11'55''$ East, along the Northerly line of said parcel II, 19.29 feet to an angle point;

Thence North $38^{\circ}22'29''$ East, continuing along said Northerly line, 49.24 feet to a point;

Thence North $57^{\circ}45'27''$ East, 92.25 feet to a point on the Easterly line of said Parcel II;

Thence South $33^{\circ}07'37''$ East, along said Easterly line (said line being parallel with, when measured perpendicular to the Westerly line of said Parcel II), 76.01 feet to a point;

Thence South $57^{\circ}45'27''$ West, 157.01 feet to the TRUE POINT OF BEGINNING.

Contains in all 11,193 square feet, more or less.

Together with and/or subject to easements of record as applicable.

See Exhibit Map attached hereto



EXHIBIT MAP

RIGHT-OF-WAY ACQUISITION

MAY 31, 2023

PIN 37910148
OWNER: CITY OF
VANCOUVER

FUTURE ROW
ACQUISITION

FUTURE ROW
ACQUISITION

PIN 37910109/
149/150/151
OWNER: TOWER MALL
PROPERTIES LLC

MACARTHUR
BLVD

N38°22'29"E 49.24'
FUTURE ROW
ACQUISITION

N36°11'55"E 19.29'

N33°07'37"W 52.58'

POINT OF
BEGINNING

50'

N33°07'37"W 339.25'

POINT OF
COMMENCEMENT
WEST CORNER
LOT 2- SP 2/243

RIGHT-OF-WAY
ACQUISITION
11,193 SQ. FT.
0.257 ACRES

AF #4807596

PIN 37910163/986035736
OWNER: ABC HOMES LLC

N57°45'27"E 92.25'

S33°07'37"E 76.01'

S57°45'27"W 157.01'

N BLANDFORD DR

Scale 1" = 60'



DRAWN BY: RFS

SCALE: 1"=60'

5.31.23

CHECKED BY: TLG

JOB NO.: 71595.000

SHEET 1 OF 1

ABC Homes LLC right-of-way acquisition
Legal Description

Being a portion of Parcel II conveyed to ABC Homes, LLC, a Washington Limited Liability company as described in Auditor's File Number 4807596, Clark County Deed Records, and being a portion of the John Nye Donation Land Claim located in the Southwest one-quarter of Section 30, Township 2 North, Range 2 East of the Willamette Meridian, City of Vancouver, Clark County, Washington and being more particularly described as follows:

BEGINNING AT the Westerly most corner of Lot 2 of that Short Plat recorded in Book 2, Page 243, Short Plat Records of Clark County, Washington and the **TRUE POINT OF BEGINNING** of the herein described right-of-way acquisition;

Thence North 33°07'37" West, along the Westerly line of said Parcel II (also being the easterly right-of-way line of MacArthur Boulevard), 7.68 feet to a point;

Thence North 56°55'35" East, leaving said Westerly line, 156.99 feet to a point on the Easterly line of said Parcel II;

Thence South 33°07'37" East, along said Easterly line (said line being parallel with, when measured perpendicular to the Westerly line of said Parcel II), 7.46 feet to the northern most corner of Lot 2 of said Short Plat recorded in Book 2, Page 243;

Thence South 56°50'44" West, 156.99 feet to the **TRUE POINT OF BEGINNING**.

Contains in all 1,189 square feet, more or less.

Together with and/or subject to easements of record as applicable.

See Exhibit Map attached hereto

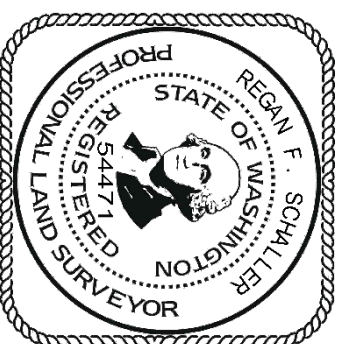


EXHIBIT MAP

RIGHT-OF-WAY ACQUISITION

AUGUST 31, 2023

AF #4807596
PIN 37910163/986035736
OWNER: ABC HOMES LLC

VARIES

FUTURE ROW
ACQUISITION

RIGHT-OF-WAY
ACQUISITION
1,189 SQ. FT.
XX ACRES

N56°55'35"E 156.99'
S56°50'44"W 156.99'

NORTHERLY LINE
LOT 2

N33°07'37"W
7.68'

POINT OF
BEGINNING
WESTERN
MOST CORNER
LOT 2- SP 2/243

50'

PIN 37910132
OWNER: DAWK
ENTERPRISES LLC

2

"SHORT PLAT
2-243"

Scale 1" = 60'



DRAWN BY: RFS

SCALE: 1"=40'

8.31.23

CHECKED BY: TLG

JOB NO.: 71595.000

SHEET 1 OF 1

EXHIBIT "C"
Legal Description
Easement Condemnation
Portion of Tax Lot 037910-148

A portion of the easement for ingress, egress and parking, as described in the document recorded under Auditor's File Number 4151938 EAS, records of Clark County Washington, that exists over a tract of land conveyed to the City of Vancouver as described in Special Warranty Deed filed under Auditor's File Number 5419742, records of Clark County, Washington, being a portion of the John Nye Donation Land Claim and located in the West half of Section 30, Township 2 North, Range 2 East of the Willamette Meridian, City of Vancouver, Clark County, Washington, being described more particularly as follows:

BEGINNING AT A POINT which is South 551.89 feet and East 1714.11 feet of the West Quarter Corner of Section 30, Township 2 North, Range 2 East of the Willamette Meridian, Clark County Washington, said point being on the West line of Devine Road, and at the Northeast corner of the T. B. Bruno property, as conveyed by deed recorded in Volume D-34, Page 174, Under Auditor's File Number G213157, records of Clark County Washington; THENCE North 0° 04' 02" West 27.81 feet to a point on the West line of Devine Road and the Southeast corner of the Harry M. Poliear tract, as conveyed by deed recorded in Volume D-34, Page 396, under Auditor's Number G213675, records of Clark County, Washington; THENCE South 89° 55' 58" West, a distance of 99.10 feet; THENCE North 0° 04' 02" West 150.00 feet; THENCE North 89° 55' 58" East, a distance of 99.10 feet to a point of the West line of Devine Road; THENCE along the West line of Devine Road, North 0° 04' 02" West a distance of 555.69 feet to a point at the beginning of a curve having a radius of 20.15 feet, a central angle of 89° 30' 10" and a bearing to the northwest; THENCE along the arc of said curve for a distance of 31.47 feet to a point on compound curve having a radius of 1880.00 feet, a central angle of 0° 50' 20" and a bearing westerly; THENCE along the arc of a curve, a distance of 27.53 feet to a point on the south line of Mill Plain Boulevard; THENCE South 89° 35' 28" West, a distance of 1073.80 feet along the South line of Mill Plain Boulevard to a point; THENCE South 89° 06' 28" West, 60.70 feet along the South side of Mill Plain Boulevard to the beginning of a curve having a radius of 25.00 feet, a central angle of 123° 48' 30" and bearing to the southeast; THENCE along the arc of said curve, a distance of 54.02 feet to a point on the North line of MacArthur Boulevard; THENCE South 34° 42' 02" East 967.30 feet along the North line of MacArthur Boulevard to the westerly corner of said T.B. Bruno tract; THENCE along the Northerly line thereof, North 55° 17' 58" East, a distance of 157.14 feet; THENCE North 89° 59' 58" East, a distance of 523.14 feet to the Point OF BEGINNING.

EXCEPT that portion lying westerly of a line drawn parallel to and 10 feet easterly of the following described line:

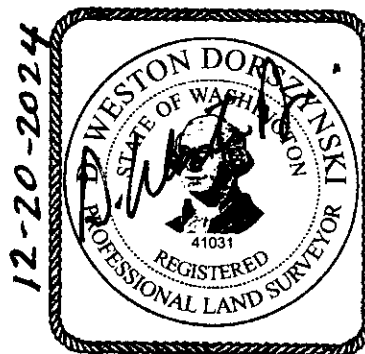
Beginning at a point on the North line of MacArthur Boulevard, said point being North 34° 29' 58" East, 53.49 feet from a concrete monument set at the intersection of the centerlines of MacArthur Boulevard and Blandford drive; THENCE North 34° 29' 58" East, 15.86 feet; THENCE North 36° 48' 28" East, 61.53 feet; THENCE North 19° 02' 58" East, 276.83 feet; THENCE North 21° 07' 28" East, 184.00 feet; THENCE North 28° 04' 28" East, 13.61 feet to a point on the South line of Mill Plain Boulevard.

ALSO EXCEPT that portion thereof conveyed to Michael R Mastro by Quit Claim Deed recorded November 4, 2005, under Auditor's file Number 4077324.

ALSO EXCEPT a portion of this parcel more particularly described as follows:

COMMENCING From the westerly corner of T. B. Bruno property as conveyed by deed recorded in Volume D-34, Page 174, under Auditor's File Number G213157, records of Clark County Washington, said point also being the westerly corner of Lot 2 of that Short Plat recorded in Book 2, Page 243, Short Plat records of Clark County, Washington; THENCE along the North line of said T. B. Bruno property and said Lot 2, North 55° 17' 58" East, 157.14 feet to an angle point in the north line of said Lot 2; THENCE northwesterly, parallel with the northerly line of MacArthur Boulevard, bearing being defined as North 33° 07' 37" West, 7.46 feet to the TRUE POINT OF BEGINNING of the described exception; THENCE continuing northwesterly, parallel with said northerly line of MacArthur Boulevard, 329.28 feet; THENCE North 57° 45' 27" East, 113.02 feet; THENCE southeasterly, parallel with said northerly line of MacArthur Boulevard, 327.65 feet; THENCE South 56° 55' 35" West, 113.01 feet to the TRUE POINT OF BEGINNING.

This exception contains 37,120 square feet, more or less.



EXCEPT that portion lying westerly of a line drawn parallel to and 10 feet easterly of the following described line:

Beginning at a point on the North line of MacArthur Boulevard, said point being North 34° 29' 58" East, 53.49 feet from a concrete monument set at the intersection of the centerlines of MacArthur Boulevard and Blandford drive; THENCE North 34° 29' 58" East, 15.86 feet; THENCE North 36° 48' 28" East, 61.53 feet; THENCE North 19° 02' 58" East, 276.83 feet; THENCE North 21° 07' 28" East, 184.00 feet; THENCE North 28° 04' 28" East, 13.61 feet to a point on the South line of Mill Plain Boulevard.

ALSO EXCEPT that portion thereof conveyed to Michael R Mastro by Quit Claim Deed recorded November 4, 2005, under Auditor's file Number 4077324.

ALSO EXCEPT a portion of this parcel more particularly described as follows:

COMMENCING From the westerly corner of T. B. Bruno property as conveyed by deed recorded in Volume D-34, Page 174, under Auditor's File Number G213157, records of Clark County Washington, said point also being the westerly corner of Lot 2 of that Short Plat recorded in Book 2, Page 243, Short Plat records of Clark County, Washington; THENCE along the North line of said T. B. Bruno property and said Lot 2, North 55° 17' 58" East, 157.14 feet to an angle point in the north line of said Lot 2; THENCE northwesterly, parallel with the northerly line of MacArthur Boulevard, bearing being defined as North 33° 07' 37" West, 7.46 feet to the TRUE POINT OF BEGINNING of the described exception; THENCE continuing northwesterly, parallel with said northerly line of MacArthur Boulevard, 329.28 feet; THENCE North 57° 45' 27" East, 113.02 feet; THENCE southeasterly, parallel with said northerly line of MacArthur Boulevard, 327.65 feet; THENCE South 56° 55' 35" West, 113.01 feet to the TRUE POINT OF BEGINNING.

This exception contains 37,120 square feet, more or less.

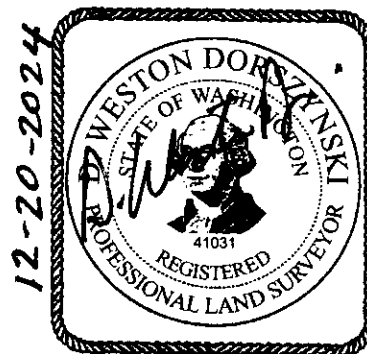




Exhibit D

ABC Homes LLC
Temporary Construction Easement
Legal Description

Being a portion of Parcel II conveyed to ABC Homes, LLC, a Washington Limited Liability company as described in Auditor's File Number 4807596, Clark County Deed Records, and being a portion of the John Nye Donation Land Claim located in the Southwest one-quarter of Section 30, Township 2 North, Range 2 East of the Willamette Meridian, City of Vancouver, Clark County, Washington and being more particularly described as follows:

COMMENCING FROM the Westerly most corner of Lot 2 of that Short Plat recorded in Book 2, Page 243, Short Plat Records of Clark County, Washington;

Thence North 33°07'37" West, along the Westerly line of said Parcel II (also being the easterly right-of-way line of MacArthur Boulevard), 7.92 feet to a proposed right-of-way line and the **TRUE POINT OF BEGINNING "A"** of the herein described temporary construction easement;

Thence continuing North 33°07'37" West, along the Westerly line of said Parcel II, 5.00 feet to a point;

Thence North 56°57'33" East, 156.99 feet to the East line of said Parcel II;

Thence South 33°07'37" East, along said East line, 5.00 feet to the aforementioned proposed right-of-way line;

Thence South 56°57'33" West, along said proposed right-of-way line, 156.99 feet to the **TRUE POINT OF BEGINNING "A"**.

Contains 785 square feet, more or less.

ALSO INCLUDING:

COMMENCING FROM the Westerly most corner of Lot 2 of that Short Plat recorded in Book 2, Page 243, Short Plat Records of Clark County, Washington;

Thence North 33°07'37" West, along the Westerly line of said Parcel II (also being the easterly right-of-way line of MacArthur Boulevard), 319.25 feet to the **TRUE POINT OF BEGINNING "B"** of the herein described temporary construction easement;

Thence continuing North 33°07'37" West, along the Westerly line of said Parcel II, 20.00 feet to a proposed right-of-way line;

Thence North 57°45'27" East, along the said proposed right-of-way line, 157.01 feet to the East line of said Parcel II;

Thence South 33°07'37" East, along said East line, 20.00 feet to a point;

Thence South 57°45'27" West, 157.01 feet to the **TRUE POINT OF BEGINNING "B"**.

Contains 3,140 square feet, more or less.

Together with and/or subject to easements of record as applicable.

See Exhibit Map attached hereto



9.5.25

EXHIBIT MAP

TEMPORARY CONSTRUCTION EASEMENT

SEPTEMBER 3, 2025

AF #4807596

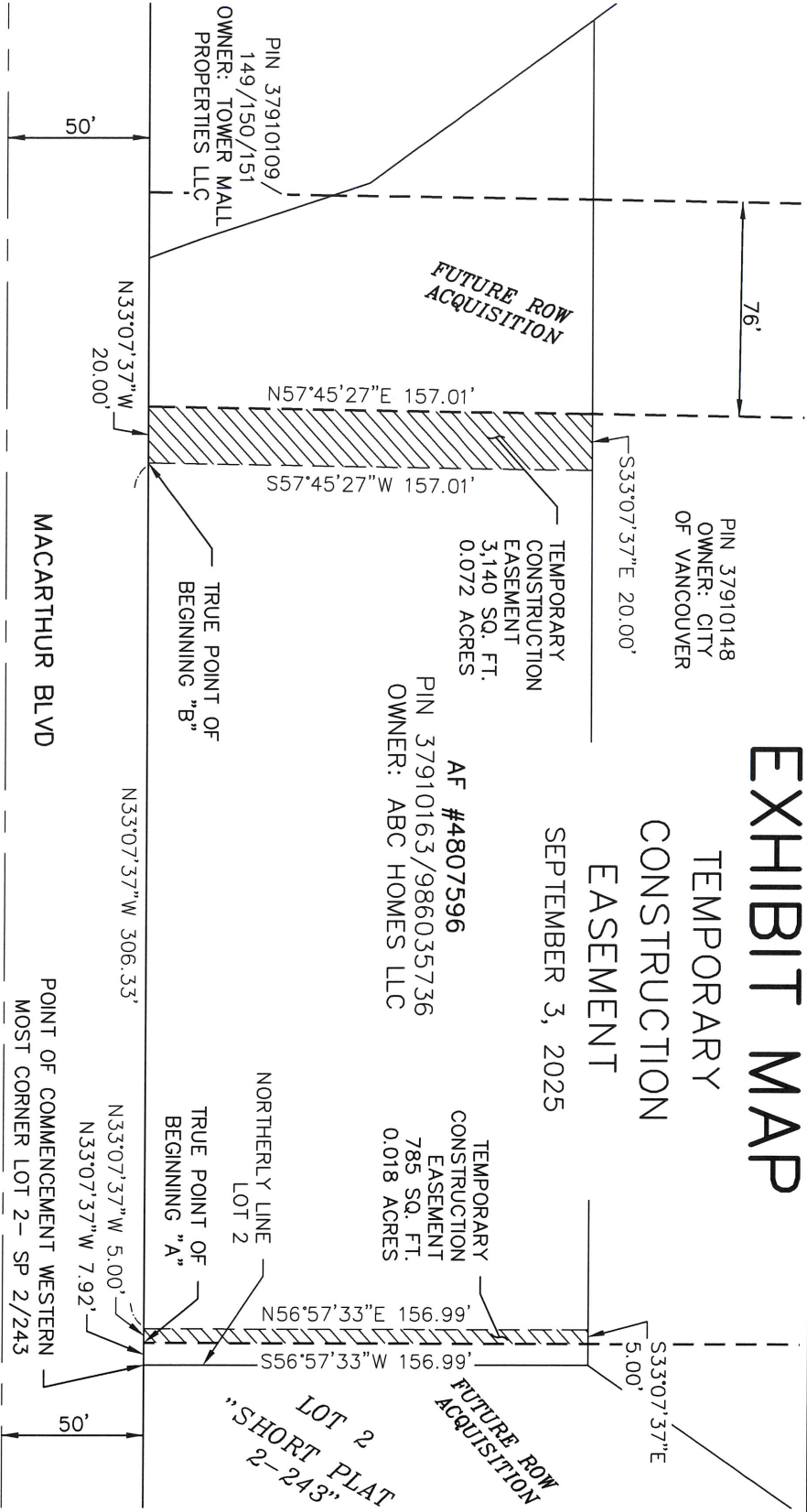
PIN 37910163/986035736
OWNER: ABC HOMES LLC

TEMPORARY
CONSTRUCTION
EASEMENT
785 SQ. FT.
0.018 ACRES

TEMPORARY
CONSTRUCTION
EASEMENT
3,140 SQ. FT.
0.072 ACRES

PIN 37910148
OWNER: CITY
OF VANCOUVER

PIN 37910109/
149/150/151
OWNER: TOWER MALL
PROPERTIES LLC



Scale 1" = 60'



PBS

DRAWN BY: RFS	SCALE: 1"=60'	9.3.25
CHECKED BY: TLG	JOB NO.: 71595.000	SHEET 1 OF 1

09/16/24
10/07/24

ORDINANCE NO. M-4464

AN ORDINANCE in the public interest relating to construction for the public use of transportation and streets and sidewalks; declaring the public necessity for and providing for the acquisition by the City of Vancouver by eminent domain of certain property, located in the City limits at 5300 MacArthur Boulevard and described herein, required to construct such public street improvements and related facilities within the City of Vancouver, Washington; taking final action to authorize condemnation of such property; authorizing the City Attorney to prosecute eminent domain proceedings and to stipulate in mitigation of damages; providing for payment of just compensation in exchange for such property; and providing for an immediate effective date.

WHEREAS, the Washington State Constitution (Article 1, Section 16) and Title 8 of the Revised Code of Washington authorizes the City of Vancouver to acquire private property necessary for public use following due process of law and payment of just compensation and such legal proceedings to purchase private property are called condemnation actions; and

WHEREAS, the City's eminent domain authority includes acquisition of real property in fee title as well as interests in real property, such as easements; and

WHEREAS, the City of Vancouver Public Works Department has developed right-of way plans, approved by City Council on May 15, 2023 through Resolution M-4222, that indicate which portions of parcels and property interests are necessary to be acquired for the Heights District Plan Grand Loop road public transportation infrastructure construction project; and

WHEREAS, the City has negotiated in good faith as to the amount of compensation due to the property owner and has based its offer compensation package, including a perpetual parking

easement, and land valuation price on a licensed MAI certified appraiser; and

WHEREAS, the statutorily required notice has been provided to the property owner pursuant to RCW 8.12.005 and RCW 8.25.290 of the City's intent to take final action authorizing condemnation of the subject property; and

WHEREAS, good faith negotiations have not yet resulted in an agreement between the parties; and

WHEREAS, the City Council is exercising its independent discretion to take final action authorizing the City to commence a condemnation proceeding and confirming the City's right to acquire such property as in the public interest and necessary to fulfill a public purpose, and to settle the amount of just compensation owing to the property owner.

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

Section 1. Findings.

A. Public Interest. As described in Staff Report 191-24 and as evidenced by City Council Resolution M-4222 adopted May 15, 2023, the Vancouver City Council finds that the public interest necessitates the acquisition of certain portions of a parcel of real property and an easement located within the right of way of N. Blandford Drive east of MacArthur Boulevard, for a public use in the construction of certain public transportation improvements and related facilities ("Project").

B. Subject Property. The property ("Subject Property") to be taken pursuant to this Ordinance includes the fee interest in portions of one parcel listed at Exhibit "A", as well as replacement and relocation of certain permanent parking easement interest. The Subject Property to be taken for the Project is specifically described in the attached Exhibits B and C. Acquisition of the

ORDINANCE - 2

Subject Property is necessary to completion of the Project.

C. Prior Good Faith Negotiation. The City of Vancouver, by and through its Economic Prosperity and Housing Department and Public Works Department, has actively worked in good faith to acquire the Subject Property by negotiated sale. Honest differences of opinion exist between the City of Vancouver and the owner of the Subject Property.

E. Public Use. The City of Vancouver's Public Works Department has a Six-Year Transportation Improvement Program, which indicates that the Project is in the public interest and the Subject Property must be acquired for the construction of these street and utility infrastructure improvements within the Heights District Plan (Tower Mall Redevelopment) area.

F. Necessity for Subject Property. Due to the public need to construct the public transportation infrastructure improvements to accommodate future growth in the Heights District Plan area, development and traffic demands, the public use and public interest necessitates the City to initiate the acquisition of the Subject Property and payment of just compensation by exercise of the power of eminent domain through a condemnation proceeding. Acquisition of the Subject Property will not change its current use and enjoyment nor require any tenant relocation.

G. Location. The Subject Property to be acquired by negotiated sale or by eminent domain proceedings authorized by this Ordinance are within the city limits of the City of Vancouver, Clark County, Washington and are necessary for construction of the Project.

Section 2. Payment of Compensation The Subject Property to be acquired pursuant to the City's power of eminent domain shall be acquired only after just compensation has been made or paid into the Clark County Superior Court registry or special account for the benefit of the owner or owners in a manner provided by law.

Section 3. Source of Funds. All just compensation, fees, and costs associated with the

ORDINANCE - 3

acquisition by eminent domain proceedings of the Subject Property, shall be paid from the City of Vancouver Transportation Project fund, and if this fund were insufficient, from the City's general fund or other funds then available for such purposes.

Section 4. Authority of Attorney. The City Attorney is hereby authorized to begin and prosecute the actions and proceedings in the manner provided by law to condemn, take, damage and appropriate all lands and other properties as necessary to carry out the provisions of this Ordinance. The City Attorney is also authorized to enter into stipulations for the purpose of minimizing damages, including all stipulations authorized by Chapter 8.25 RCW.

Section 5. Effective Date. As discussed in Staff Report 191-24, and the findings of this Ordinance, there is an immediate need to initiate eminent domain proceedings to acquire the Subject Property to accommodate the Project; an emergency is hereby declared; and this Ordinance shall go into effect immediately upon final passage.

DATE OF FINAL PASSAGE by the Vancouver City Council: October 7, 2024.

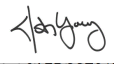
SIGNED this 7th day of October 2024.

DocuSigned by:

 6C89D9089EC5424...
 Anne McEnery-Ogle, Mayor

Attest:
 DocuSigned by:

 493E940414AE4BD...
 Natasha Ramras, City Clerk

Approved as to form:
 DocuSigned by:

 9A7DC2E31F694A2...
 Jonathan Young, City Attorney

SUMMARY

ORDINANCE NO. M-4464

AN ORDINANCE in the public interest relating to construction for the public use of transportation and streets and sidewalks; declaring the public necessity for and providing for the acquisition by the City of Vancouver by eminent domain of certain property, located in the City limits at 5300 MacArthur Boulevard and described herein, required to construct such public street improvements and related facilities within the City of Vancouver, Washington; taking final action to authorize condemnation of such property; authorizing the City Attorney to prosecute eminent domain proceedings and to stipulate in mitigation of damages; providing for payment of just compensation in exchange for such property; and providing for an immediate effective date.

The full text of this ordinance will be mailed upon request. Contact public records staff at (360) 487-8480, citypdr@cityofvancouver.us, or via [Public Records Request -The City of Vancouver, WA](#).

To: Mayor and City Council
From: City Manager
Date: October 6, 2025

Subject

Approval of Claim Vouchers

Action Requested

Approve claim vouchers for October 6, 2025.

Attachments:

1. October 6, 2025 Claim Vouchers

VOUCHER APPROVAL

We, the undersigned council members of the City of Vancouver, Clark County, Washington, do hereby certify that the merchandise or services hereinafter specified have been received and that the vouchers listed below are approved for payment in the amount of:

\$ 22,972,690.39 this 6th day of October 2025.

MAYOR

Cyndi A. Turner

Digitally signed by Cyndi A.
Turner
Date: 2025.09.29 14:47:56 -07'00'

AUDITING OFFICER

COUNCILMEMBER

COUNCILMEMBER

DATE	INCLUSIVE CHECK NUMBERS	CHECK TOTAL
September 15, 2025 - September 28, 2025	Accounts Payable Checks (see attached)	\$ 18,575,271.81
September 15, 2025 - September 28, 2025	Hansen City Payments (see attached)	\$ 27,447.01
September 15, 2025 - September 28, 2025	Visa Refunds (see attached)	\$ 3,599.57
September 15, 2025 - September 28, 2025	Payroll Checks (see attached)	\$ 4,366,372.00
TOTAL		\$ 22,972,690.39

INVOICE PAYMENTS REPORT

<u>Category</u>	<u>Type</u>	<u>Transaction Reference</u>	<u>Date</u>	<u>Amount</u>	<u>Payee</u>	<u>Memo</u>
Miscellaneous Payment	Check	27362	9/17/2025	199.30	Alan Martin	RES-376808 (jobsite: 3518 NE 161st Ave.)
Miscellaneous Payment	Check	27363	9/17/2025	87.00	Carulli Medical Clinic	Refund duplicate payment to INV#77076550
Miscellaneous Payment	Check	27364	9/17/2025	100.00	Father Blanchet Park Neighborhood Association	2025 Resource Conservation Challenge
Miscellaneous Payment	Check	27365	9/17/2025	773.00	Garrett Patten	LUP-85349 (jobsite: 6418 Montana Lane)
Miscellaneous Payment	Check	27366	9/17/2025	241.84	GB Manchester Inc	FRI-373090 (jobsite: 17801 SE 6th Way, Suite 100)
Miscellaneous Payment	Check	27367	9/17/2025	2,873.00	Holt Group Holdings LLC	RES-372169 (jobsite: 1500 NE 181st Ave.)
Miscellaneous Payment	Check	27368	9/17/2025	83.87	Jacob Thomas	Refund parking permit #COV12421
Miscellaneous Payment	Check	27369	9/17/2025	120.00	Northcrest Neighborhood Association	2025 RecycleU
Miscellaneous Payment	Check	27370	9/17/2025	11,980.00	Recovery Cafe of Clark County	Refund Business Licnese Fees - Verified Non-profit business.
Miscellaneous Payment	Check	27371	9/17/2025	1,617.74	Tyrone Ford	Claim Payment - DOI: 09/03/2025 - RISK
Miscellaneous Payment	Check	27372	9/17/2025	100.00	Vancouver Highlands Neighborhood Association	2025 Resource Conservation Challenge
Ad Hoc Payment	Check	27373	9/17/2025	330.00	Carla E Horner or Duane R Peterson	12703 NE 46TH ST ,VANCOUVER,WA,98682
Ad Hoc Payment	Check	27374	9/17/2025	163.94	Flint,Lynette	3501 SE 171ST AVE ,VANCOUVER,WA,98683
Ad Hoc Payment	Check	27375	9/17/2025	185.37	Gates,Emmett	13910 NE 8TH ST ,VANCOUVER,WA,98684
Ad Hoc Payment	Check	27376	9/17/2025	248.00	Glatt,Darel or Rita	4014 NE 158TH AVE ,VANCOUVER,WA,98682
Ad Hoc Payment	Check	27377	9/17/2025	1,686.26	Heaton,Gene	4117 NE 39TH AVE ,VANCOUVER,WA,98661
Ad Hoc Payment	Check	27378	9/17/2025	113.46	Hurt,Braden	3508 NE 61ST WAY ,VANCOUVER,WA,98661
Ad Hoc Payment	Check	27379	9/17/2025	11.84	Huynh,Linsey L	12714 SE 27TH ST ,VANCOUVER,WA,98683
Ad Hoc Payment	Check	27380	9/17/2025	474.01	Joey or Michelle Castro	12107 NE 71ST ST ,VANCOUVER,WA,98682
Ad Hoc Payment	Check	27381	9/17/2025	196.00	Jones,Brandy	13703 NE 61ST ST ,VANCOUVER,WA,98682
Ad Hoc Payment	Check	27382	9/17/2025	184.78	King,Heather	4100 NE 42ND AVE ,VANCOUVER,WA,98661
Ad Hoc Payment	Check	27383	9/17/2025	10.38	Lyman H Potts or Teresa G O'Brien-Potts	4309 SE 178TH PL ,VANCOUVER,WA,98683
Ad Hoc Payment	Check	27384	9/17/2025	1,500.00	Michael or Michelle Bell	15206 NE 34TH ST ,VANCOUVER,WA,98682
Ad Hoc Payment	Check	27385	9/17/2025	60.09	Moore,Nancy	2323 GENERAL ANDERSON ,VANCOUVER,WA,98660
Ad Hoc Payment	Check	27386	9/17/2025	186.00	Parman,Jesse or Emily	317 SE 150TH CT ,VANCOUVER,WA,98684
Ad Hoc Payment	Check	27387	9/17/2025	123.76	Personal Property Management	4313 NE VALLEY VIEW LN ,VANCOUVER,WA,98663
Ad Hoc Payment	Check	27388	9/17/2025	257.68	Randall or Barbara Bogle	713 NE 123RD AVE ,VANCOUVER,WA,98684
Ad Hoc Payment	Check	27389	9/17/2025	84.28	Schaffer,Tiffany or Max	9606 NE 134TH AVE ,VANCOUVER,WA,98682
Ad Hoc Payment	Check	27390	9/17/2025	36.54	Sherman A or Sandra K Bussard	10602 NE 113TH AVE ,VANCOUVER,WA,98662
Ad Hoc Payment	Check	27391	9/17/2025	434.11	Simpson,Donnie R	7915 NE 20TH ST ,VANCOUVER,WA,98664
Ad Hoc Payment	Check	27392	9/17/2025	1,140.13	Strong,Rekah	18520 NE 26TH DR ,VANCOUVER,WA,98684
Ad Hoc Payment	Check	27393	9/17/2025	113.00	The Estate of Harriet Norman	9302 NE 102ND ST ,VANCOUVER,WA,98662
Ad Hoc Payment	Check	27394	9/17/2025	55.78	Zirkle,Glenn	2323 GENERAL ANDERSON ,VANCOUVER,WA,98660
Supplier Payment	Check	27395	9/17/2025	10,522.50	Allegis Group Holdings Inc - Remit-To: TekSystems Inc - Atlanta	
Supplier Payment	Check	27396	9/17/2025	142.80	American Sani-Can	
Supplier Payment	Check	27397	9/17/2025	778.14	Anderson Glass Co	

*Please contact Procurement Services if you would like to review the justification for EMERGENCY procurement.

INVOICE PAYMENTS REPORT

<u>Category</u>	<u>Type</u>	<u>Transaction Reference</u>	<u>Date</u>	<u>Amount</u>	<u>Payee</u>	<u>Memo</u>
Supplier Payment	Check	27398	9/17/2025	11,101.39	Brown & Wilson Partnership LLC	
Supplier Payment	Check	27399	9/17/2025	9,078.50	BSK Associates - Remit-To: Supplier BSK Associates	
Supplier Payment	Check	27400	9/17/2025	1,695.30	Carahsoft Technology	
Supplier Payment	Check	27401	9/17/2025	119,539.63	Car Toys, Inc.	
Supplier Payment	Check	27402	9/17/2025	14,178.00	Cellco Partnership - Remit-To: Cellco - Dallas	
Supplier Payment	Check	27403	9/17/2025	48,410.23	Century West Engineering Corp	
Supplier Payment	Check	27404	9/17/2025	10,742.06	CFM Strategic Communications, Inc.	
Supplier Payment	Check	27405	9/17/2025	4,050.00	City Bark & Recycling LLC	
Supplier Payment	Check	27406	9/17/2025	439.00	Clark County - Remit-To: Clark County Public Health	
Supplier Payment	Check	27407	9/17/2025	268,729.63	Clark County - Remit-To: Clark County - Treasurer Vancouver	
Supplier Payment	Check	27408	9/17/2025	119,822.12	Clary Longview LLC	
Supplier Payment	Check	27409	9/17/2025	601.71	Comcast Holdings Corporation - Remit-To: Comcast Business - City of Industry	
Supplier Payment	Check	27410	9/17/2025	2,008.32	Community Foundation for Southwest Washington	
Supplier Payment	Check	27411	9/17/2025	7,800.00	Concord Adult Care Home, LLC	
Supplier Payment	Check	27412	9/17/2025	36,762.13	DLT Solutions LLC	
Supplier Payment	Check	27413	9/17/2025	540.00	Evergreen School District 114	
Supplier Payment	Check	27414	9/17/2025	729.00	Fidelity National Title Co of Washington	
Supplier Payment	Check	27415	9/17/2025	4,598.38	Fly Fab	
Supplier Payment	Check	27416	9/17/2025	19,553.47	GreenWorks, P.C.	
Supplier Payment	Check	27417	9/17/2025	2,518.75	Groundwater Solutions, Inc.	
Supplier Payment	Check	27418	9/17/2025	159.80	Harold LeMay Enterprises	
Supplier Payment	Check	27419	9/17/2025	4,860.88	HMI Oregon	
Supplier Payment	Check	27420	9/17/2025	1,482.31	Kurita America Inc - Remit-To: US Water - Minneapolis	
Supplier Payment	Check	27421	9/17/2025	6,710.35	L.N. Curtis & Sons	
Supplier Payment	Check	27422	9/17/2025	903.42	Lakeyland Inc	
Supplier Payment	Check	27423	9/17/2025	4,592.94	Language Line Services, Inc.	
Supplier Payment	Check	27424	9/17/2025	190.40	Mark IV Enterprises Inc	
Supplier Payment	Check	27425	9/17/2025	2,151.25	Maul Foster & Alongi Inc	
Supplier Payment	Check	27426	9/17/2025	600.00	Nagra & Atwal Corporation	
Supplier Payment	Check	27427	9/17/2025	5,358.34	National Park Service - Remit-To: National Park Service - Pearson Lease	
Supplier Payment	Check	27428	9/17/2025	4,650.00	Odyssey World International Education Services	
Supplier Payment	Check	27429	9/17/2025	264.10	One Call Concepts Inc	
Supplier Payment	Check	27430	9/17/2025	323.14	Pacific Towing INC.	
Supplier Payment	Check	27431	9/17/2025	13,457.82	Passport Labs Inc. - Remit-To: Passport Labs Inc	
Supplier Payment	Check	27432	9/17/2025	6,278.00	Portland Adventist Medical Center	
Supplier Payment	Check	27433	9/17/2025	4,778.40	SafeFire LLC	
Supplier Payment	Check	27434	9/17/2025	14.18	Software House International SHI - Remit-To: SHI - Dallas	
Supplier Payment	Check	27435	9/17/2025	986.00	Soha Sign	
Supplier Payment	Check	27436	9/17/2025	25,692.21	State of Washington Department of Transportation - Remit-To: WADOT - PO Box 47339	
Supplier Payment	Check	27437	9/17/2025	45.00	Totalsir LLC	
Supplier Payment	Check	27438	9/17/2025	1,725.30	Triple J Enterprises, Inc.	

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INVOICE PAYMENTS REPORT

<u>Category</u>	<u>Type</u>	<u>Transaction Reference</u>	<u>Date</u>	<u>Amount</u>	<u>Payee</u>	<u>Memo</u>
Supplier Payment	Check	27439	9/17/2025	3,267.70	United States Department of Agriculture - Remit-To: USDA APHIS - St Louis	
Supplier Payment	Check	27440	9/17/2025	622.57	Walter E Nelson Company	
Miscellaneous Payment	Check	27441	9/24/2025	50.00	Allison Long	Meter Hood Refund
Miscellaneous Payment	Check	27442	9/24/2025	1,300.00	Alzheimer's Association Oregon Chapter	Damage Deposit Refund
Miscellaneous Payment	Check	27443	9/24/2025	679.87	Amplified Wireless Solutions Inc.	FRI-368849 (jobsite: 333 SE 120th Ave.)
Miscellaneous Payment	Check	27444	9/24/2025	100.00	Bella Vista Neighborhood Association	2025 Resource Conservation Challenge
Miscellaneous Payment	Check	27445	9/24/2025	94.00	Cascade Inn	Refund duplicate payment to INV#77078005
Miscellaneous Payment	Check	27446	9/24/2025	100.00	Cascade Southeast Neighborhood Association- Attn Kathy Koch, Treasurer	2025 Resource Conservation Challenge
Miscellaneous Payment	Check	27447	9/24/2025	1,000.00	Eliane Racine	CLAIM PAYMENT - DOI: 07/19/2025 - RISK
Miscellaneous Payment	Check	27448	9/24/2025	100.00	Lewis and Clark Woods Neighborhood Association - Maureen Hursh Treasurer	2025 Resource Conservation Challenge
Miscellaneous Payment	Check	27449	9/24/2025	541.30	PLS Engineering	Refund parking permit #COV14571, no longer needed.
Miscellaneous Payment	Check	27450	9/24/2025	100.00	Riveridge Neighborhood Association-Laurie Bryson (Harpel), Treasurer	2025 Resource Conservation Challenge
Miscellaneous Payment	Check	27451	9/24/2025	30.00	Steven & Belen Ortiz	WTR-377496 (jobsite: 10702 SE French Rd.)
Miscellaneous Payment	Check	27452	9/24/2025	650.00	Vancouver for Peace	R15789
Miscellaneous Payment	Check	27453	9/24/2025	100.00	Wildwood Neighborhood Association - Claire Jurkovich Treasurer	2025 Resource Conservation Challenge
Ad Hoc Payment	Check	27454	9/24/2025	200.00	3 Kings Environmental Inc	HYDRANT AVE ,VANCOUVER,WA,98664
Ad Hoc Payment	Check	27455	9/24/2025	294.48	Bahr,Donald	9500 NE 106TH WAY ,VANCOUVER,WA,98662
Ad Hoc Payment	Check	27456	9/24/2025	105.65	Bare,Andrew	7314 NE 66TH ST ,VANCOUVER,WA,98662
Ad Hoc Payment	Check	27457	9/24/2025	265.00	Cammann,Anita or Ray	4315 NE 26TH CT ,VANCOUVER,WA,98663
Ad Hoc Payment	Check	27458	9/24/2025	105.52	Cantrell,Angelica or Hunter	8512 NE 83RD CT ,VANCOUVER,WA,98662
Ad Hoc Payment	Check	27459	9/24/2025	14.90	Cascade West Development Inc	8700 NE 183RD PL ,VANCOUVER,WA,98682
Ad Hoc Payment	Check	27460	9/24/2025	27.66	CCS Homes Inc	8010 NE 168TH AVE ,VANCOUVER,WA,98682
Ad Hoc Payment	Check	27461	9/24/2025	198.00	Cynthia Langdale or Lewis Langdale	19215 SE 33RD CIR ,CAMAS,WA,98607
Ad Hoc Payment	Check	27462	9/24/2025	5,698.72	Delta Management	13216 NE 59TH ST ,VANCOUVER,WA,98682
Ad Hoc Payment	Check	27463	9/24/2025	95.36	DR Horton	4502 NE 104TH PL ,VANCOUVER,WA,98682
Ad Hoc Payment	Check	27464	9/24/2025	33.38	DR Horton	10519 NE 120TH AVE ,VANCOUVER,WA,98662
Ad Hoc Payment	Check	27465	9/24/2025	323.83	Dumond,Jana	10827 NE 99TH AVE ,VANCOUVER,WA,98662
Ad Hoc Payment	Check	27466	9/24/2025	78.41	Finnell,Patricia or Dale	10800 NE 89TH ST ,VANCOUVER,WA,98662
Ad Hoc Payment	Check	27467	9/24/2025	226.62	Ga Hi Kim	15526 NE 70TH ST ,VANCOUVER,WA,98682
Ad Hoc Payment	Check	27468	9/24/2025	51.15	Georgetta,Molly	117 W 24TH ST ,VANCOUVER,WA,98660
Ad Hoc Payment	Check	27469	9/24/2025	8,041.81	Heaton,Gene W	4117 NE 39TH AVE ,VANCOUVER,WA,98661
Ad Hoc Payment	Check	27470	9/24/2025	52.05	Heidi or Greg McGinley	16120 NE 9TH WAY ,VANCOUVER,WA,98684
Ad Hoc Payment	Check	27471	9/24/2025	652.40	Hodge,Tammy	4613 E 18TH ST ,VANCOUVER,WA,98661
Ad Hoc Payment	Check	27472	9/24/2025	101.28	Holt Holdings LLC	8517 NE 134TH PL ,VANCOUVER,WA,98682
Ad Hoc Payment	Check	27473	9/24/2025	173.00	Hong,Kyun Hyuk	4007 NE 136TH CT ,VANCOUVER,WA,98682

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INVOICE PAYMENTS REPORT

<u>Category</u>	<u>Type</u>	<u>Transaction Reference</u>	<u>Date</u>	<u>Amount</u>	<u>Payee</u>	<u>Memo</u>
Ad Hoc Payment	Check	27474	9/24/2025	201.31	Imaino, Daniel	505 NE 138TH PL .VANCOUVER, WA, 98684
Ad Hoc Payment	Check	27475	9/24/2025	120.18	Kaitlin Fortner or Michael Ko Jr	127 N LIESER RD .VANCOUVER, WA, 98664
Ad Hoc Payment	Check	27476	9/24/2025	202.86	Kala Madugula or Venugopal Koppala, or Bharathi Charungundk	6820 NE VANCOUVER MALL DR .VANCOUVER, WA, 98661
Ad Hoc Payment	Check	27477	9/24/2025	140.50	Kala Madugula or Venugopal Koppala, or Bharathi Charungundk	6820 NE VANCOUVER MALL DR .VANCOUVER, WA, 98661
Ad Hoc Payment	Check	27478	9/24/2025	76.65	Kala Madugula or Venugopal Koppala or, Bharathi Charungundk	6830 NE VANCOUVER MALL DR .VANCOUVER, WA, 98661
Ad Hoc Payment	Check	27479	9/24/2025	251.35	Kala Madugula or Venugopal Koppala or, Bharathi Charungundk	6830 NE VANCOUVER MALL DR .VANCOUVER, WA, 98661
Ad Hoc Payment	Check	27480	9/24/2025	18.25	Kellen or Sarah Moody	116 EVERGREEN DR .VANCOUVER, WA, 98661
Ad Hoc Payment	Check	27481	9/24/2025	27.93	Kingston Homes Llc	17017 NE 81ST ST .VANCOUVER, WA, 98682
Ad Hoc Payment	Check	27482	9/24/2025	236.40	Legacy 6	123 HYDRANT AVE .VANCOUVER, WA, 98664
Ad Hoc Payment	Check	27483	9/24/2025	234.97	Lgi Homes Group Llc	5325 NE 68TH ST .VANCOUVER, WA, 98661
Ad Hoc Payment	Check	27484	9/24/2025	114.44	Luebke, Matthew	2004 NE 178TH AVE .VANCOUVER, WA, 98684
Ad Hoc Payment	Check	27485	9/24/2025	33.99	Manago, Ferdinand	15323 NE 108TH WAY .VANCOUVER, WA, 98682
Ad Hoc Payment	Check	27486	9/24/2025	150.06	Manor Homes Northwest Inc	10706 SE 13TH CIR .VANCOUVER, WA, 98664
Ad Hoc Payment	Check	27487	9/24/2025	287.19	Mary or Scott Perkins	7104 NE 163RD PL .VANCOUVER, WA, 98682
Ad Hoc Payment	Check	27488	9/24/2025	114.67	McClanahan, Jayme	9416 NE 169TH AVE .VANCOUVER, WA, 98682
Ad Hoc Payment	Check	27489	9/24/2025	137.00	Michael or Caryle Kuykendall	1529 CELLARS AVE .VANCOUVER, WA, 98661
Ad Hoc Payment	Check	27490	9/24/2025	212.44	Moon, Patrick C	2005 E 29TH ST .VANCOUVER, WA, 98663
Ad Hoc Payment	Check	27491	9/24/2025	3.28	Myra E Brock or Shelby A Leroy	11528 NE 32ND ST .VANCOUVER, WA, 98682
Ad Hoc Payment	Check	27492	9/24/2025	8.81	Myra E Brock or Shelby A Leroy	11528 NE 32ND ST .VANCOUVER, WA, 98682
Ad Hoc Payment	Check	27493	9/24/2025	76.96	Myra E Brock or Shelby A Leroy	11528 NE 32ND ST .VANCOUVER, WA, 98682
Ad Hoc Payment	Check	27494	9/24/2025	132.57	OD Labs Property	1910 SE 176TH CT .VANCOUVER, WA, 98683
Ad Hoc Payment	Check	27495	9/24/2025	126.76	Omega NW Inc	11918 NE 31ST ST .VANCOUVER, WA, 98682
Ad Hoc Payment	Check	27496	9/24/2025	105.34	Pacific Lifestyle Homes Inc	17304 NE 83RD ST .VANCOUVER, WA, 98682
Ad Hoc Payment	Check	27497	9/24/2025	31.96	Pavel or Kateryna Voloshin or Sergii Dzhush	5957 NE 80TH CT .VANCOUVER, WA, 98662
Ad Hoc Payment	Check	27498	9/24/2025	386.74	Phillips, Viola	18407 NE 20TH ST .VANCOUVER, WA, 98684
Ad Hoc Payment	Check	27499	9/24/2025	35.37	Randall K Estates Llc	12319 NE 107TH WAY .VANCOUVER, WA, 98682
Ad Hoc Payment	Check	27500	9/24/2025	41.50	Randall K Estates Llc	12303 NE 107TH WAY .VANCOUVER, WA, 98682
Ad Hoc Payment	Check	27501	9/24/2025	46.74	Randall K Estates Llc	12311 NE 107TH WAY .VANCOUVER, WA, 98682
Ad Hoc Payment	Check	27502	9/24/2025	36.96	Randall K Estates Llc	10702 NE 122ND PL .VANCOUVER, WA, 98682
Ad Hoc Payment	Check	27503	9/24/2025	470.45	The Ellertson Revocable Living Trust	7108 TOPEKA LN .VANCOUVER, WA, 98664
Ad Hoc Payment	Check	27504	9/24/2025	713.52	The Estate of Norrene Lee Hale	5915 NE 56TH CT .VANCOUVER, WA, 98661
Ad Hoc Payment	Check	27505	9/24/2025	86.37	The Estate of Philip Bude	4406 NE 48TH ST .VANCOUVER, WA, 98661
Ad Hoc Payment	Check	27506	9/24/2025	510.24	The Swan Thibodeaux Living Trust	18500 NE 79TH ST .VANCOUVER, WA, 98682
Ad Hoc Payment	Check	27507	9/24/2025	236.57	Tommy Hoang or Thuy Le	16712 NE 95TH ST .VANCOUVER, WA, 98682
Ad Hoc Payment	Check	27508	9/24/2025	210.42	Torres, German Vega	1138 W 30TH ST .VANCOUVER, WA, 98660
Ad Hoc Payment	Check	27509	9/24/2025	35.86	Uusitalo, Richard	7105 NE 58TH AVE .VANCOUVER, WA, 98661

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INVOICE PAYMENTS REPORT

<u>Category</u>	<u>Type</u>	<u>Transaction Reference</u>	<u>Date</u>	<u>Amount</u>	<u>Payee</u>	<u>Memo</u>
Ad Hoc Payment	Check	27510	9/24/2025	24.56	Viktoriya Statnik or Yelisey Tokar	16505 NE 90TH CIR .VANCOUVER,WA,98682
Ad Hoc Payment	Check	27511	9/24/2025	93.88	Walker,Renada	14107 NE 39TH ST .VANCOUVER,WA,98682
Ad Hoc Payment	Check	27512	9/24/2025	47.63	Yu,Hoy or Sufang	4002 SE 187TH LOOP .VANCOUVER,WA,98683
Ad Hoc Payment	Check	27513	9/24/2025	49.75	Zaparaniuk,Volodymyr or Yuliia	10311 NE 63RD PL .VANCOUVER,WA,98662
Supplier Payment	Check	27514	9/24/2025	26,095.93	Ace Parking Management Inc	
Supplier Payment	Check	27515	9/24/2025	14.00	Airgas, Inc	
Supplier Payment	Check	27516	9/24/2025	15,650.00	Alabama Canine Law Enforcement Officer's Training Center Inc	
Supplier Payment	Check	27517	9/24/2025	1,110.76	A-Line Asphalt Maintenance Inc	
Supplier Payment	Check	27518	9/24/2025	256.00	Allegiance Benefit Plan Management Inc (COBRA)	
Supplier Payment	Check	27519	9/24/2025	4,880.00	Allegis Group Holdings Inc - Remit-To: TekSystems Inc - Atlanta	
Supplier Payment	Check	27520	9/24/2025	110,976.00	Allied Plumbing and Pumps LLC - Remit-To: Allied Trenchless	
Supplier Payment	Check	27521	9/24/2025	5,700.00	All Traffic Data Services Inc	
Supplier Payment	Check	27522	9/24/2025	13,000.70	Arborscape Ltd Inc	
Supplier Payment	Check	27523	9/24/2025	175.00	AT & T Mobility National Accounts LLC - Remit-To: Legal Demand Center for Law Enforcement	
Supplier Payment	Check	27524	9/24/2025	6,597.52	Axon Enterprises Inc	
Supplier Payment	Check	27525	9/24/2025	50.00	Briann Dunevant	
Supplier Payment	Check	27526	9/24/2025	8,250.00	Burlington Northern Santa Fe	
Supplier Payment	Check	27527	9/24/2025	2,964.69	Cellco Partnership - Remit-To: Cellco - Dallas	
Supplier Payment	Check	27528	9/24/2025	37.10	Clark County Public Utility District No. 1	
Supplier Payment	Check	27529	9/24/2025	545,015.41	Clark County Public Utility District No. 1	
Supplier Payment	Check	27530	9/24/2025	1,884.93	Clark County Public Utility District No. 1	
Supplier Payment	Check	27531	9/24/2025	33.39	Clark County Public Utility District No. 1	
Supplier Payment	Check	27532	9/24/2025	8.66	Clark County Public Utility District No. 1	
Supplier Payment	Check	27533	9/24/2025	173,641.84	Clark County - Remit-To: Clark County - Treasurer Vancouver	
Supplier Payment	Check	27534	9/24/2025	1,252.40	Columbia Resource Company	
Supplier Payment	Check	27535	9/24/2025	2,500.00	Columbia River Economic Development Council Inc	
Supplier Payment	Check	27536	9/24/2025	103,811.25	Columbia River Mental Health Services	
Supplier Payment	Check	27537	9/24/2025	118.61	Comcast Holdings Corporation - Remit-To: Comcast Business - City of Industry	
Supplier Payment	Check	27538	9/24/2025	2,383.52	Comcast Holdings Corporation - Remit-To: Comcast Business - City of Industry	
Supplier Payment	Check	27539	9/24/2025	18,849.64	Comcast Holdings Corporation - Remit-To: Comcast Holdings Corporation - Philadelphia	
Supplier Payment	Check	27540	9/24/2025	5,477.41	Core and Main LP - Remit-To: Core and Main LP	
Supplier Payment	Check	27541	9/24/2025	6,615.00	Davidson Benefits Planning	
Supplier Payment	Check	27542	9/24/2025	4,422.18	Day Management Corp - Remit-To: Day Wireless - Milwaukie	

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INVOICE PAYMENTS REPORT

<u>Category</u>	<u>Type</u>	<u>Transaction Reference</u>	<u>Date</u>	<u>Amount</u>	<u>Payee</u>	<u>Memo</u>
Supplier Payment	Check	27543	9/24/2025	5,974.27	DLT Solutions LLC	
Supplier Payment	Check	27544	9/24/2025	21,542.40	Eco-Counter Inc	
Supplier Payment	Check	27545	9/24/2025	200.00	Emiliano Martinez Delgadillo	
Supplier Payment	Check	27546	9/24/2025	300.00	ERF Company Inc	
Supplier Payment	Check	27547	9/24/2025	200.00	Fatou Bojang	
Supplier Payment	Check	27548	9/24/2025	48,024.90	FFA Architecture and Interiors, Inc	
Supplier Payment	Check	27549	9/24/2025	16,333.67	Fourth Plain Forward	
Supplier Payment	Check	27550	9/24/2025	150.00	Francisco Javier Valencia Jr	
Supplier Payment	Check	27551	9/24/2025	76,347.85	GBD Architects	
Supplier Payment	Check	27552	9/24/2025	3,892.70	Genuine Parts Company - Remit-To: NAPA - Vancouver	
Supplier Payment	Check	27553	9/24/2025	50.00	Gyza Rachman	
Supplier Payment	Check	27554	9/24/2025	3,968.25	H&H Wood Recyclers	
Supplier Payment	Check	27555	9/24/2025	319.45	Harold LeMay Enterprises	
Supplier Payment	Check	27556	9/24/2025	18,189.56	Herrera Environmental Consultants Inc	
Supplier Payment	Check	27557	9/24/2025	12,044.66	HMI Oregon	
Supplier Payment	Check	27558	9/24/2025	1,063.82	Industrial Scientific Corporation - Remit-To: Industrial Scientific Corp - Pittsburgh	
Supplier Payment	Check	27559	9/24/2025	200.00	Isaiah Gonzalez	
Supplier Payment	Check	27560	9/24/2025	21,350.22	Janus Youth Programs Inc	
Supplier Payment	Check	27561	9/24/2025	500.00	John D Van Beek Music We Remember	
Supplier Payment	Check	27562	9/24/2025	18,048.44	JRT Mechanical Inc	
Supplier Payment	Check	27563	9/24/2025	8,037.00	Kramer Gehlen & Associates	
Supplier Payment	Check	27564	9/24/2025	9,603.33	L.N. Curtis & Sons	
Supplier Payment	Check	27565	9/24/2025	107.60	Lakeyland Inc	
Supplier Payment	Check	27566	9/24/2025	33,469.80	Life Insurance Company of North America	
Supplier Payment	Check	27567	9/24/2025	13,754.71	Lower Columbia Estuary Partnership	
Supplier Payment	Check	27568	9/24/2025	49,516.50	LSW Architects PC	
Supplier Payment	Check	27569	9/24/2025	755.46	Melvin Creative LLC	
Supplier Payment	Check	27570	9/24/2025	1,220.83	MICHAEL KEVIN ANDERSON	
Supplier Payment	Check	27571	9/24/2025	200.00	Miranda Harvey	
Supplier Payment	Check	27572	9/24/2025	731.25	Nancy Pionk Coaching and Consulting, LLC	
Supplier Payment	Check	27573	9/24/2025	22,347.52	National Hose Testing Specialties, Inc.	
Supplier Payment	Check	27574	9/24/2025	2,833.65	Northwest Natural Gas Company - Remit-To: NW Natural - Portland	
Supplier Payment	Check	27575	9/24/2025	6,930.50	NOVA Medical Experts	
Supplier Payment	Check	27576	9/24/2025	503.65	Pallet PBC	
Supplier Payment	Check	27577	9/24/2025	19,326.95	Parkeon	
Supplier Payment	Check	27578	9/24/2025	1,052.52	Performance Systems Integration, LLC - Remit-To: Performance Systems Integration, LLC	
Supplier Payment	Check	27579	9/24/2025	315.00	Porter W Yett Company	
Supplier Payment	Check	27580	9/24/2025	7,271.00	Portland Adventist Medical Center	
Supplier Payment	Check	27581	9/24/2025	5,537.46	PPC Solutions Inc	
Supplier Payment	Check	27582	9/24/2025	6,476.43	Qwest Corporation - Remit-To: Qwest Corp- Seattle	
Supplier Payment	Check	27583	9/24/2025	6,233.15	RTS Northwest Inc.	
Supplier Payment	Check	27584	9/24/2025	50.00	Savaya Sanders	
Supplier Payment	Check	27585	9/24/2025	190,499.70	Scott Edwards Architecture LLP	
Supplier Payment	Check	27586	9/24/2025	4,166.54	Shrums Pest Control	
Supplier Payment	Check	27587	9/24/2025	506.36	Software House International SHI - Remit-To: SHI - Dallas	
Supplier Payment	Check	27588	9/24/2025	67,550.96	Southwest Washington Humane Society	

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INVOICE PAYMENTS REPORT

<u>Category</u>	<u>Type</u>	<u>Transaction Reference</u>	<u>Date</u>	<u>Amount</u>	<u>Payee</u>	<u>Memo</u>
Supplier Payment	Check	27589	9/24/2025	183,906.92	Stantec Consulting Services Inc - Remit-To: Stantec - Chicago	
Supplier Payment	Check	27590	9/24/2025	300.00	State of Washington Department of Licensing - Remit-To: Notary Public Program	
Supplier Payment	Check	27591	9/24/2025	5,583.02	State of Washington Department of Transportation - Remit-To: WADOT - PO Box 47305	
Supplier Payment	Check	27592	9/24/2025	565.76	Sunbelt Controls Inc - Remit-To: Sunbelt Controls - Pasadena	
Supplier Payment	Check	27593	9/24/2025	165.00	T-Mobile	
Supplier Payment	Check	27594	9/24/2025	1,224.00	Towing and Recovery Services, Inc.	
Supplier Payment	Check	27595	9/24/2025	1,367.04	Trilogy MedWaste West, LLC	
Supplier Payment	Check	27596	9/24/2025	2,072.63	Triple J Enterprises, Inc.	
Supplier Payment	Check	27597	9/24/2025	11,809.44	Turner Electrical Services, LLC	
Supplier Payment	Check	27598	9/24/2025	12,183.39	TV Etc ESD 112	
Supplier Payment	Check	27599	9/24/2025	555.00	Vancouver Granite Works Inc	
Supplier Payment	Check	27600	9/24/2025	222.36	Vestis Group, Inc - Remit-To: Vestis - Pasadena	
Supplier Payment	Check	27601	9/24/2025	489.60	W.B. Sprague Co. Inc.	
Supplier Payment	Check	27602	9/24/2025	1,117.10	Walter E Nelson Company	
Supplier Payment	Check	27603	9/24/2025	13,726.10	Waste Connections of Washington - Remit-To: Waste Connections - Vancouver	
Supplier Payment	Check	27604	9/24/2025	40,396.28	Waste Connections of Washington - Remit-To: Waste Connections - Vancouver	
Supplier Payment	Check	27605	9/24/2025	108,898.60	Western Equipment Distributors - Remit-To: Western Equipment - Los Angeles	
Supplier Payment	Check	27606	9/24/2025	28,429.50	West Yost & Associates Inc.	
Supplier Payment	Check	27607	9/24/2025	169.49	Willis Towers Watson Insurance Services West inc	
Supplier Payment	Check	27608	9/24/2025	58,139.00	WSP USA Inc. - Remit-To: WSP USA Inc. Dallas	
Supplier Payment	Check	27609	9/24/2025	205.14	WVP of Washington PC	
Supplier Payment	Check	27610	9/25/2025	5,614.99	Aflac	
Supplier Payment	Check	27611	9/25/2025	6,129.82	AFSCME Local #307	
Supplier Payment	Check	27612	9/25/2025	2,533.50	Chapter 13 - Trustee	
Supplier Payment	Check	27613	9/25/2025	491.00	Hawaii SDU	
Supplier Payment	Check	27614	9/25/2025	780.65	IAM Local #1374	
Supplier Payment	Check	27615	9/25/2025	8,818.59	Life Insurance Company of North America	
Supplier Payment	Check	27616	9/25/2025	1,300.00	MFS Service Center Inc	
Supplier Payment	Check	27617	9/25/2025	4,873.90	OPEIU Local #11	
Supplier Payment	Check	27618	9/25/2025	851.00	Teamsters Local #58	
Supplier Payment	Check	27619	9/25/2025	332.50	UA Local #290	
Supplier Payment	Check	27620	9/25/2025	3,164.70	Western Conference of Teamsters	
Supplier Payment	Check	27621	9/25/2025	1,435.20	Western Metal Industry Pension Plan	
			Check	3,114,204.37		
Expense Payment	Direct Deposit	EFT-00315769	9/18/2025	125.00	Megan Fletcher	Employee Reimbursement
Cash Advance Payment	Direct Deposit	EFT-00315770	9/18/2025	388.00	Jason Mills	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00315771	9/18/2025	388.00	Daphne Harris	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00315772	9/18/2025	360.00	Jamie Haske	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00315773	9/18/2025	388.00	Jaycee Elliott	Travel Advance

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<u>Category</u>	<u>Type</u>	<u>Transaction Reference</u>	<u>Date</u>	<u>Amount</u>	<u>Payee</u>	<u>Memo</u>
Cash Advance Payment	Direct Deposit	EFT-00315774	9/18/2025	117.00	Geraldene Moyle	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00315775	9/18/2025	388.00	Brian Viles	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00315776	9/18/2025	388.00	Amanda Cestnik	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00315777	9/18/2025	238.00	Bridgid Mullane	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00315778	9/18/2025	238.00	Laura Thornquist	Travel Advance
Expense Payment	Direct Deposit	EFT-00315779	9/18/2025	148.18	Ryan Miles	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00315780	9/18/2025	13.63	Corri Powell	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00315781	9/18/2025	85.33	James Rayner	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00315782	9/18/2025	223.60	Luke Koistinen	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00315783	9/18/2025	13.17	Matt Hoover	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00315784	9/18/2025	154.84	Kristin Smith	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00315785	9/18/2025	73.37	Kristi Lucht	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00315786	9/18/2025	106.00	Darin Viar	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00315787	9/18/2025	175.00	Jose Lopez	Employee Reimbursement
Cash Advance Payment	Direct Deposit	EFT-00317802	9/25/2025	148.75	Samantha Moody	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00317803	9/25/2025	318.00	Marc Patchin	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00317804	9/25/2025	318.00	Nathan Hipple	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00317805	9/25/2025	241.50	Gavin Zirkel	Travel Advance
Expense Payment	Direct Deposit	EFT-00317806	9/25/2025	500.00	Kyle McCleary	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00317807	9/25/2025	371.31	Heidi Scarpelli	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00317808	9/25/2025	610.33	Mehrin Selimgir	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00317809	9/25/2025	141.60	Catherine Morey	Employee Reimbursement
Cash Advance Payment	Direct Deposit	EFT-00317810	9/25/2025	46.50	Brian E. Wilson	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00317811	9/25/2025	46.50	Kristi Lucht	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00317812	9/25/2025	177.25	Patrick Kennedy	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00317813	9/25/2025	208.50	Shane Hall	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00317814	9/25/2025	155.06	Erik Paulsen	Travel Advance
			Direct Deposit	7,294.42		
Supplier Payment	EFT	EFT-00315737	9/18/2025	826,851.89	Midway Underground LLC	
Supplier Payment	EFT	EFT-00315738	9/18/2025	7,500.00	Arbutus Consulting LLC	
Supplier Payment	EFT	EFT-00315739	9/18/2025	7,005.50	Otak Inc	
Supplier Payment	EFT	EFT-00315740	9/18/2025	642,775.72	First Forty Feet LLC	
Supplier Payment	EFT	EFT-00315741	9/18/2025	360.00	Rotschy Inc	
Supplier Payment	EFT	EFT-00315742	9/18/2025	140.00	Brad Piesch Aggressive Enterprises, Inc	
Supplier Payment	EFT	EFT-00315743	9/18/2025	2,600.00	Andrew Prochniak	
Supplier Payment	EFT	EFT-00315744	9/18/2025	9,959.45	Vancouver Housing Authority	
Supplier Payment	EFT	EFT-00315745	9/18/2025	34,446.00	Jacobs Engineering Group Inc	
Supplier Payment	EFT	EFT-00315746	9/18/2025	10,394.44	Limeade, Inc	
Supplier Payment	EFT	EFT-00315747	9/18/2025	10,678.31	Copiers Northwest Inc.	
Supplier Payment	EFT	EFT-00315748	9/18/2025	1,500.37	Loomis Armored US LLC	
Supplier Payment	EFT	EFT-00315749	9/18/2025	8,052.52	Contract Land Staff LLC	
Supplier Payment	EFT	EFT-00315750	9/18/2025	2,500.00	The Amy VanCamp Experience LLC	
Supplier Payment	EFT	EFT-00315751	9/18/2025	564.28	Branlo Enterprises, LLC	
Supplier Payment	EFT	EFT-00315752	9/18/2025	2,000.00	Eurofins Eaton Analytical, LLC	

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Supplier Payment	EFT	EFT-00315753	9/18/2025	79,452.45	Conzor North America Inc - Remit-To: Consor North America Inc	
Supplier Payment	EFT	EFT-00315754	9/18/2025	30,000.00	J & J Roofing and Construction	
Supplier Payment	EFT	EFT-00315755	9/18/2025	5,441.74	Distinctive Landscape LLC	
Supplier Payment	EFT	EFT-00315756	9/18/2025	877.50	Haley & Aldrich, Inc	
Supplier Payment	EFT	EFT-00315757	9/18/2025	13,860.62	Fehr & Peers	
Supplier Payment	EFT	EFT-00315758	9/18/2025	1,353.75	PointNorth Consulting, Inc.	
Supplier Payment	EFT	EFT-00315759	9/18/2025	33,093.74	Northwest Staffing Resources Inc - Remit-To: Northwest Staffing Resources	
Supplier Payment	EFT	EFT-00315760	9/18/2025	2,050.00	Oregon Aerial Construction LLC	
Supplier Payment	EFT	EFT-00315761	9/18/2025	412.28	MacKay Sposito Inc	
Supplier Payment	EFT	EFT-00315762	9/18/2025	1,607,358.28	Cascade Fire Equipment Corp	
Supplier Payment	EFT	EFT-00315763	9/18/2025	27,959.54	Wilson Oil Inc. - Remit-To: Wilson Oil Inc	
Supplier Payment	EFT	EFT-00315764	9/18/2025	750.00	Seawater Marine, LLC	
Supplier Payment	EFT	EFT-00315765	9/18/2025	17,793.86	Halbert Construction Services LLC	
Supplier Payment	EFT	EFT-00315766	9/18/2025	46,565.94	Safeware, Inc.	
Supplier Payment	EFT	EFT-00315767	9/18/2025	5,293.06	GMP Consultants	
Supplier Payment	EFT	EFT-00315768	9/18/2025	795,085.06	Operations Management International Inc	
Supplier Payment	EFT	EFT-00317815	9/25/2025	550.00	Performance Occupational Health Services, LLC	
Supplier Payment	EFT	EFT-00317816	9/25/2025	349,853.32	Capture Contracting, LLC	
Supplier Payment	EFT	EFT-00317817	9/25/2025	25,121.92	Pacific Drain Services LLC	
Supplier Payment	EFT	EFT-00317818	9/25/2025	7,257.91	Fire Systems West	
Supplier Payment	EFT	EFT-00317819	9/25/2025	49,910.00	United Site Services of Nevada, Inc.	
Supplier Payment	EFT	EFT-00317820	9/25/2025	235,857.60	MacKay Sposito Inc	
Supplier Payment	EFT	EFT-00317821	9/25/2025	27,352.05	Pacific Landscape Services Inc	
Supplier Payment	EFT	EFT-00317822	9/25/2025	458.00	Rapid Response Bio Clean Inc.	
Supplier Payment	EFT	EFT-00317823	9/25/2025	12,507.46	Western Water Works Supply Co Inc	
Supplier Payment	EFT	EFT-00317824	9/25/2025	6,429.50	Davis Wright Tremaine LLP	
Supplier Payment	EFT	EFT-00317825	9/25/2025	10,000.00	Right Click Solutions Inc.	
Supplier Payment	EFT	EFT-00317826	9/25/2025	501,552.72	Stellar J Corporation	
Supplier Payment	EFT	EFT-00317827	9/25/2025	28,750.00	Vancouver Downtown Association	
Supplier Payment	EFT	EFT-00317828	9/25/2025	38.06	Ziply Fiber	
Supplier Payment	EFT	EFT-00317829	9/25/2025	12,303.74	Fehr & Peers	
Supplier Payment	EFT	EFT-00317830	9/25/2025	20,670.86	Northwest Staffing Resources Inc - Remit-To: Northwest Staffing Resources	
Supplier Payment	EFT	EFT-00317831	9/25/2025	898.66	TMC Contractors LLC	
Supplier Payment	EFT	EFT-00317832	9/25/2025	1,877.24	Praxair Distribution Inc	
Supplier Payment	EFT	EFT-00317833	9/25/2025	1,636.62	Bound Tree Medical LLC	
Supplier Payment	EFT	EFT-00317834	9/25/2025	3,560.00	Vietnamese Community of Clark County	
Supplier Payment	EFT	EFT-00317835	9/25/2025	15,667.20	Aramco	
Supplier Payment	EFT	EFT-00317836	9/25/2025	25,525.00	Sazan Group, Inc	
Supplier Payment	EFT	EFT-00317837	9/25/2025	63,010.03	Wilson Oil Inc. - Remit-To: Wilson Oil Inc	
Supplier Payment	EFT	EFT-00317838	9/25/2025	29,998.20	Construction Services Group, Inc.	
Supplier Payment	EFT	EFT-00317839	9/25/2025	6,429.61	Outsiderinn.org	
Supplier Payment	EFT	EFT-00317840	9/25/2025	4,795.00	Nelson Nygaard Consulting Associates Inc	
Supplier Payment	EFT	EFT-00317841	9/25/2025	1,736,173.83	Tapani Inc	
Supplier Payment	EFT	EFT-00317842	9/25/2025	5,350.64	Live Love Outreach	
Supplier Payment	EFT	EFT-00317843	9/25/2025	16,207.50	MAKERS architecture and urban design LLP	
Supplier Payment	EFT	EFT-00317844	9/25/2025	31,334.40	Workday Inc	

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Supplier Payment	EFT	EFT-00317845	9/25/2025	1,566.83	AHA Mobile Repair and Fleet Services	
Supplier Payment	EFT	EFT-00317846	9/25/2025	6,385.25	Terracon Consultants Inc - Remit-To: Terracon Consultans Inc	
Supplier Payment	EFT	EFT-00317847	9/25/2025	918.00	Pacifica Law Group LLP - Remit-To: Pacifica Law Group	
Supplier Payment	EFT	EFT-00317848	9/25/2025	5,786.79	Waxie's Enterprises Inc	
Supplier Payment	EFT	EFT-00317849	9/25/2025	5,220.00	Rock Creek Communications, LLC	
Supplier Payment	EFT	EFT-00317850	9/25/2025	1,826.80	Wallis Engineering PLLC - Remit-To: Wallis Engineering	
Supplier Payment	EFT	EFT-00317851	9/25/2025	106,116.03	Halbert Construction Services LLC	
Supplier Payment	EFT	EFT-00317852	9/25/2025	69,908.07	Share	
Supplier Payment	EFT	EFT-00317853	9/25/2025	70,751.36	State of Washington Department of Enterprise Services	
Supplier Payment	EFT	EFT-00317854	9/25/2025	78,615.62	Western United Civil Group, LLC - Remit-To: Western United Civil Group, LLC	
Supplier Payment	EFT	EFT-00317855	9/25/2025	3,091.84	WasteXpress Environmental LLC	
Supplier Payment	EFT	EFT-00317856	9/25/2025	4,955.18	Wapiti NW LLC	
Supplier Payment	EFT	EFT-00317857	9/25/2025	21,707.50	Kennedy Jenks Consultants, Inc.	
Supplier Payment	EFT	EFT-00317858	9/25/2025	32,381.98	Conzor North America Inc - Remit-To: Consor North America Inc	
Supplier Payment	EFT	EFT-00317859	9/25/2025	20,654.00	The Exhibits Department, LLC	
Supplier Payment	EFT	EFT-00317860	9/25/2025	16,500.00	Karras Consulting, Inc	
Supplier Payment	EFT	EFT-00317861	9/25/2025	16,093.88	State of Washington Auditor's Office	
Supplier Payment	EFT	EFT-00317862	9/25/2025	14,517.95	PBS Engineering and Environmental Inc	
Supplier Payment	EFT	EFT-00317863	9/25/2025	210.00	Brad Piesch Aggressive Enterprises, Inc	
Supplier Payment	EFT	EFT-00317864	9/25/2025	185,168.84	Operations Management International Inc	
Supplier Payment	EFT	EFT-00317865	9/25/2025	900.00	Rotschy Inc	
Supplier Payment	EFT	EFT-00317866	9/25/2025	157.00	Marten Law LLP	
Supplier Payment	EFT	EFT-00317867	9/25/2025	2,495.00	Atlas Technical Consultants LLC	
Supplier Payment	EFT	EFT-00317868	9/25/2025	3,768.85	Distinctive Landscape LLC	
Supplier Payment	EFT	EFT-00317869	9/25/2025	8,728.98	C21 Construction LLC	
Supplier Payment	EFT	EFT-00317870	9/25/2025	2,113,598.35	Granite Construction Company	
Supplier Payment	EFT	EFT-00317871	9/25/2025	4,404.38	Apex Hood Cleaning Inc - Remit-To: Apex Hood Cleaning Inc	
Supplier Payment	EFT	EFT-00317872	9/25/2025	3,792.17	Accurate Investigation Services	
Supplier Payment	EFT	EFT-00317873	9/25/2025	188.60	MedTox Laboratories, Inc.	
Supplier Payment	EFT	EFT-00317874	9/25/2025	3,906.24	Canopy Wellbeing	
Supplier Payment	EFT	EFT-00317875	9/25/2025	30,508.32	Bacon Collision & Reconditioning, LLC	
Supplier Payment	EFT	EFT-00317876	9/25/2025	1,293.36	Vancouver Command Guild	
Supplier Payment	EFT	EFT-00317877	9/25/2025	12,067.21	Vancouver Police Officer Guild	
Supplier Payment	EFT	EFT-00317878	9/25/2025	20,098.75	Allegiance Benefit Plan Management Inc (COBRA)	
Supplier Payment	EFT	EFT-00317879	9/25/2025	156.41	Legal Shield	
Supplier Payment	EFT	EFT-00317880	9/25/2025	33,217.47	IAFF Local #452	
			EFT	10,367,410.38		
Supplier Payment	Manual Wire		9/12/2025	50,482.18	State of Oregon Department of Revenueue	
Supplier Payment	Manual Wire		9/12/2025	15,808.24	Bank Of America N.A. - Remit-To: Account Analysis	

*Please contact Procurement Services if you would like to review the justification for EMERGENCY procurement.

INVOICE PAYMENTS REPORT

<u>Category</u>	<u>Type</u>	<u>Transaction Reference</u>	<u>Date</u>	<u>Amount</u>	<u>Payee</u>	<u>Memo</u>
Supplier Payment	Manual Wire		9/15/2025	831,013.96	State of Washington Department of Retirement Systems (DRS)	
Supplier Payment	Manual Wire		9/15/2025	564.06	JP Morgan Chase Bank, N.A.	
Supplier Payment	Manual Wire		9/16/2025	152.00	Bank Of America N.A. - Remit-To: Account Analysis	
Supplier Payment	Manual Wire		9/16/2025	141,945.47	Clark County - Remit-To: Clark County - Treasurer Vancouver	
Supplier Payment	Manual Wire		9/18/2025	2,098.00	KFPro, Inc	
Supplier Payment	Manual Wire		9/18/2025	950,000.00	First American Title Ins Co	
Supplier Payment	Manual Wire		9/18/2025	24,390.30	Washington Dental Service	
Supplier Payment	Manual Wire		9/18/2025	212,946.31	Blue Cross Blue Shield of Oregon	
Supplier Payment	Manual Wire		9/18/2025	6,074.26	Superion, LLC	
Supplier Payment	Manual Wire		9/18/2025	73,832.73	Paymentus Corporation	
Supplier Payment	Manual Wire		9/19/2025	35,922.35	Liberty Mutual Group Inc.	
Supplier Payment	Manual Wire		9/25/2025	33,571.46	Vancouver Firefighters Union Health & Welfare Trust	
Supplier Payment	Manual Wire		9/25/2025	27,875.00	Washington State Firefighters	
Supplier Payment	Manual Wire		9/25/2025	339,839.39	International City Management Association Retirement Corporation	
Supplier Payment	Manual Wire		9/25/2025	66,097.87	State of Washington Department of Retirement Systems (DRS)	
Supplier Payment	Manual Wire		9/25/2025	298,196.88	Blue Cross Blue Shield of Oregon	
Supplier Payment	Manual Wire		9/25/2025	24,197.00	Washington Dental Service	
Supplier Payment	Manual Wire		9/25/2025	7,236.54	Western States Health & Welfare Trust	
Supplier Payment	Manual Wire		9/25/2025	586.00	Oregon SDU	
Supplier Payment	Manual Wire		9/25/2025	5,519.18	Washington SDU	
Supplier Payment	Manual Wire		9/26/2025	32,529.38	Liberty Mutual Group Inc.	
Supplier Payment	Manual Wire		9/26/2025	1,360,155.95	Internal Revenue Service	
Supplier Payment	Manual Wire		9/26/2025	189.00	Colorado Department of Revenue	
Supplier Payment	Manual Wire		9/26/2025	545,139.13	State of Washington Department of Revenue	
			Manual Wire	5,086,362.64		
			Checks	3,114,204.37		
			Direct Deposit	7,294.42		
			EFT	10,367,410.38		
			9/22/2025	18,277.80	City Payments	Posted 09-15-25 to 09-21-25
			9/29/2025	9,169.21	City Payments	Posted 09-22-25 to 09-28-25
			Hansen Total	27,447.01		
			9/22/2025	200.00	Miscellaneous	Parks Class Refunds FCC 09-15-25 to 09-21-25
			9/22/2025	269.02	Miscellaneous	Parks Class Refunds MCC 09-15-25 to 09-21-25
			9/22/2025	4.00	Miscellaneous	Parks Class Refunds Special Events 09-15-25 to 09-21-25
			9/29/2025	795.00	Miscellaneous	Parks Class Refunds FCC 09-22-25 to 09-28-25
			9/29/2025	2,331.55	Miscellaneous	Parks Class Refunds MCC 09-22-25 to 09-28-25
			VISA Total	3,599.57		
			Payroll Total	4,366,372.00		
			GRAND TOTAL	22,972,690.39		

*Please contact Procurement Services if you would like to review the justification for EMERGENCY procurement.

City of Vancouver
Payroll Council Report
September 15, 2025 - September 28, 2025

Check No.	Date	Explanation	Amount
315735	09/15/25	NACHA return	\$ 977.22
3047-3065	09/25/25	September 25 Payroll	\$ 8,177.19
315860 - 317801	09/25/25	September 25 Direct Deposits	\$ 4,357,217.59

\$ 4,366,372.00

Staff Report: 205-25

To: Mayor and City Council
From: City Manager
Date: October 6, 2025

Subject

Consider Ethics Complaint Against Councilmember Harless

Key Points

- On August 29, 2025, the City Manager's Office received a complaint against Councilmember Kim Harless.
- Pursuant to City Council Policy 100-36, Council must review the Complaint and determine what next steps, if any, to take.

Strategic Plan Alignment

High Performing Government – a government that is reliable, fiscally responsible, equitable, and open to compromise

Present Situation

On August 29, 2025, the City Manager's Office received the attached ethics complaint from Mr. Brad Erhart against Councilmember Kim Harless (the "Complaint"). Under City Council Policy 100-36, the City Attorney is charged with promptly reviewing the Complaint to determine whether the Complaint, on its face, alleges facts that, if true, would substantiate a violation of the Code of Ethics and report back to Council in writing.

The City Attorney's Office had a potential conflict of interest that required the City to hire outside counsel to make that initial determination. The outside attorney's report is attached. The report concludes:

The Complaint fails to allege facts which, if true, would substantiate a violation of Policy No. 100-36, Section 6.0A, B, D or G or RCW 42.23.030.

However, the Complaint has sufficiently alleged facts to substantiate a violation of Policy No. 100-36, Section 5.0, Avoidance of the Appearance of Impropriety.

Now that the report is received, Council will review it and make a determination as to whether or not the Council should refer the Complaint to a Hearings Examiner to conduct an investigation or take any other action.

The City Manager's Office received the Complaint on Friday, August 29, 2025. The City received the outside attorney's report on Monday, September 29, 2025. Time has been reserved on October 6, 2025, under "New Business" for the Mayor and Councilmembers Paulsen, Hansen, Fox, Stober and Perez to consider what steps, if any, to take after giving Councilmember Harless has an opportunity to address the Complaint.

Advantage(s)

None

Challenge(s)

None

Budget Impact

None

Prior Council Review

None

Action Requested

Make a determination as to whether or not the Council should dismiss the Complaint, refer the allegations to a Hearings Examiner to conduct an investigation, or take any other action.

- Dismiss the Complaint and take no further action.
- Refer the Complaint to the Hearings Examiner to conduct an investigation.
- Impose sanctions under City Council Policy 100-06 Section 11.0.
- Impose sanctions under City Council Policy 100-36 Section 9.0.

Staff Contact

Nena Cook, City Attorney, nena.cook@cityofvancouver.us

Attachments:

1. Brad Erhart Formal Code of Ethics Complaint Against Kim Harless
2. Investigation Report - K. Harless
3. 100-36 Ethics Policy
4. 100-06 Council Adv Comm

Brad Erhart
300 SE 184th Ave
Apt 101
Vancouver, WA 98683

August 28, 2025

City Manager & City Council
415 W 6th St
Vancouver, WA 98660

Subject: Formal Code of Ethics Complaint Against Kim Harless (Position 1)

Dear Members of the Vancouver City Council & City Manager:

Pursuant to the *City of Vancouver Policy 100-36 (City Council Code of Ethics and Conduct)*, *Section 9.0*, I am writing to submit a formal complaint regarding violations of the *Code of Ethics* and *Washington State Law (RCW 42.23)* by Councilmember Kim Harless ("Harless").

I became personally aware of and knowledgeable about the violations detailed below beginning on August 6, 2025. This complaint is based substantially upon my personal knowledge.

This complaint details a significant conflict of interest involving Harless, in her capacity as a City Councilmember and Chair of the City of Vancouver Lodging & Tax Authority Committee ("LTAC"), and Mr. John Park ("Park"), the governor of Vancouver Arena and an applicant for City grants.

I. Summary of Violations

It has been discovered that in 2023, and continuing through 2025, Harless has maintained a romantic relationship with Park. There is further evidence suggesting this relationship existed in years prior as well. During this same period (2023, 2024, and 2025), Park applied for and received LTAC grants on behalf of Vancouver Arena for an event known as GoFest. Park is listed as the governor for Vancouver Arena in the organization's articles of incorporation and annual reports.

As Chair of LTAC and a member of the City Council, Harless participated in the review, deliberation, and approval processes for these grants without disclosing her relationship with Park and without recusing herself from the proceedings.

II. Relevant Policies and Laws Violated

Harless's actions violate the following sections of the *City of Vancouver Policy 100-36* and *Washington State Law*:

A. *City of Vancouver Policy 100-36, Section 6.0(B): Personal Influence in Contract Selection Prohibited.*

No Councilmember shall influence the City's selection of, or its conduct of business with, a corporation, person, or firm having or proposing to do business with the City if the Councilmember has a personal financial interest, direct or indirect in or with the corporation, person, or firm, unless such interest is a remote interest as defined in RCW 42.23.040 and summarized herein and where the fact and extent of such interest is disclosed and noted in the official minutes or similar records of the City prior to formation of the contract and thereafter the City Council authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the Councilmember(s) having the remote interest.

B. *City of Vancouver Policy 100-36, Section 6.0(A): Personal Interests in Contracts Prohibited.*

No Councilmember shall participate in their capacity as a councilmember in the making of a contract in which the Councilmember has a personal interest, direct or indirect, or performs in regard to such a contract some function requiring the exercise of discretion on behalf of the City.

C. *RCW 42.23.030: Interest in contracts prohibited—Exceptions.*

No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part... A municipal officer may not vote in the authorization, approval, or ratification of a contract in which he or she is beneficially interested... The interest of the municipal officer must be disclosed to the governing body... before the formation of the contract.

A significant personal or romantic relationship, particularly one with evidence suggesting cohabitation (see *Section III.A*), constitutes a direct or indirect beneficial interest in contracts awarded to the partner. This relationship does not qualify as a "remote interest" as defined in *RCW 42.23.040*.

D. *City of Vancouver Policy 100-36, Section 5.0: Avoidance of the Appearance of Impropriety.*

The failure to disclose this relationship while presiding over and voting on grants for Park creates a clear appearance of impropriety.

III. Factual Basis for Complaint

The violations stem from Harless's failure to disclose her relationship with Park and her subsequent participation in decisions benefiting Park's organization, and her own personal interests, during the 2023, 2024, and 2025 grant cycles.

A. Evidence of Relationship and Potential Shared Residence

The following evidence establishes the existence of a relationship constituting a conflict of interest:

- Information obtained from data broker websites that strongly indicate a shared residence between Harless and Park beginning in 2022.
- An Archive.org copy of a photo posted on the Vancouver Arena website showing Park and Harless in a manner that strongly reflects a romantic relationship, taken on May 7, 2023 (includes original full-sized photo with metadata intact).
- A snapshot from Facebook showing a picture of Harless's conversation with Park while referring to him as "honey" from February 2024.
- Snapshots of the postings to the Vancouver Arena Facebook Group showing Harless and Park together at Vancouver Arena events in June and July 2024.
- An Archive.org snapshot of Harless's Bluesky account showing messages exchanged between her and Park in November 2024.
- A photo of Harless and Park together in April 2025, at a Star Trek meetup.
- An Archive.org snapshot of the Vancouver Downtown Association website, and snapshots of their Facebook postings from June 28, 2025, showing what appears to be Harless cosplaying alongside Park at the LTAC grant event.
- An Archive.org copy of Harless's campaign website from August 2025, including a photo showing her arm around Park and strongly reflecting a romantic relationship (including original full-sized photo).
- A snapshot from Harless's Facebook account showing her relationship with Park dated August 6, 2025.
- A snapshot of Harless's postings to the Vancouver Arena Facebook Group dating back to May 2018.

B. Evidence of Political and Financial Connections

- Washington State Public Disclosure Commission (PDC) documents showing campaign donations made by Park to Harless in 2021 and 2025.
- Snapshots and Archive.org copies of Harless's campaign website and Facebook account showing Park holding campaign material and endorsing Harless (July 15, 2021, and October 17, 2021).
- Snapshots of Harless's campaign account on Facebook and Instagram showing Park assisting in multiple campaign activities and appearing in campaign material for Harless (May – August 2025).

C. Failure to Disclose Conflict and Failure to Recuse

Despite the established relationship, Harless failed to disclose the conflict of interest during LTAC and City Council meetings where Vancouver Arena grants were discussed and approved. This is supported by:

- Copies of all relevant LTAC meeting agendas and notes, as well as video recordings of the meetings, showing that Harless did not disclose the conflict and recuse herself as required.
- Copies of all relevant City Council meeting notes, agendas, related documents and resolutions, show that Harless did not disclose the conflict and recuse herself as required.

D. Specific Incident: October 9, 2024

On October 9, 2024, there was a presentation (believed to be presented by Chris Harder) specifically regarding conflict of interest, while Park's grant for that year was in the process of review. Other individuals recused themselves due to their own conflicts, but Harless did not. Subsequently, at the following LTAC meeting, Park was present for a presentation and neither disclosed their relationship.

IV. Acquisition of Knowledge

I acquired this knowledge while researching candidates for the primary election for the City Council Seat 1 position after receiving campaign flyers and my mail-in ballot. Dealing with issues involving City Construction Services that were impacting my community, I wanted to learn more about Harless's work and campaign promises.

As I came across her Facebook profile during my research on August 6, 2025, her profile showed that she was in a relationship with Park. Wanting to know whether the relationship could be impacting her decisions, I performed a search on Google for their names together, "Kim Harless" "John Park." I immediately found documents on the City's website regarding multiple grants to Vancouver Arena, listing Park as the applicant.

V. Actions Suggesting Intent to Conceal

After discovering sufficient evidence existed, I posted about this conflict on the Nextdoor website on August 6, 2025, which immediately gained substantial interest. The following day, August 7, 2025, as I continued collecting snapshots for evidence, Harless had removed her public relationship status with Park (documented via snapshot). While she was never obligated to share her relationship publicly, doing so immediately after having a conflict of interest discovered signifies an intent to try to conceal previous evidence from the public.

VI. Other Concerns

Because the relationship existed prior to these votes, there is significant concern that Harless may have disclosed or used confidential, privileged, or proprietary information gained by reason of her position as the chair of LTAC, or assisted Park in drafting the grant requests. This would violate *Policy 100-36, Section 6.0(C) (Disclosure of Confidential Information)* and *Section 6.0(G) (Improper Use of Position Prohibited)*.

VII. Conclusion

The evidence demonstrates a clear and repeated violation of the *City's Code of Ethics* and *RCW 42.23*. Harless failed to disclose a significant conflict of interest and participated in the awarding of City contracts to her personal partner.

I respectfully request that the City Council and City Manager process this complaint according to the procedures outlined in *Policy 100-36, Section 9.0*, including a prompt review by the City Attorney and subsequent referral to a Hearings Examiner for a full investigation.

All documentation and evidence cited in this complaint will be provided immediately upon request.

Sincerely,

A handwritten signature in cursive script that reads "Brad Erhart".

Brad Erhart

MEMORANDUM

To: Nena Cook
City Attorney
City of Vancouver
From: Kathy Dent
Date: September 29, 2025
Subject: Code of Ethics Complaint Against Councilmember Kim Harless

This memorandum summarizes my findings and general conclusions regarding the August 28, 2025, Code of Ethics Complaint submitted by Brad Erhart against Vancouver City Councilmember Kim Harless.

I. EXECUTIVE SUMMARY

A. Complaint Summary

The Complaint alleges that Harless, in her capacity as a City Councilmember and Chair of the City of Vancouver Lodging & Tax Authority Committee (“LTAC”), had an undisclosed conflict of interest arising out of her personal/romantic relationship with John Park. Park, who is identified as the governor of Vancouver Arena, applied for and received grants from LTAC in 2023, 2024 and 2025, for an event known as GoFest. During this same period, Park and Harless were allegedly involved in a personal and/or romantic relationship. Harless participated in the review, deliberation and approval for these grants, without disclosing her personal relationship with Park and without recusing herself from the proceedings.

The Complaint alleges that, by engaging in this conduct, Harless violated Policy No. 100-36, Sections 5.0, 6.0A and B, and RCW 42.23.030. The Complaint also raises a concern that Harless may also have violated Section 6.0C and G.

B. Standard of Review

I reviewed the allegations in the Complaint to determine whether the Complaint, on its face, alleges facts that, if true, would substantiate a violation of the City Council Code of Ethics and Conduct. See Policy No. 100-36, Section 9.0.

C. Conclusions

The Complaint fails to allege facts which, if true, would substantiate a violation of Policy No. 100-36, Section 6.0A, B, D or G or RCW 42.23.030.

However, the Complaint has sufficiently alleged facts to substantiate a violation of Policy No. 100-36, Section 5.0, Avoidance of the Appearance of Impropriety.

II. COMPLAINT ALLEGATIONS AND CONCLUSIONS

A. Allegation: Personal Influence in Contract Selection Prohibited, Policy 100-36, Section 6.0B.

Section 6.0B states, in part:

No Councilmember shall influence the City's selection of, or its conduct of business with, a corporation, person, or firm having or proposing to do business with the City if the Councilmember has a personal financial interest, direct or indirect in or with the corporation, person, or firm, unless such interest is a remote interest as defined in RCW 42.23.040 ... and where the fact and extent of such interest is disclosed ... and thereafter the City Council ... approves ... the contract ... without counting the vote ... of the Councilmember(s) having the remote interest.

The Complaint alleges that LTAC approved grants to Vancouver Arena in 2023, 2024 and 2025 to fund the GoFest event. Park is identified as the governor of Vancouver Arena.

The Complaint does not allege any facts that would support a finding that Harless had a "personal financial interest" in Vancouver Arena. Specifically, the Complaint does not allege any facts that would show that Harless was an officer, agent or employee of Vancouver Arena. At best, the Complaint identifies photos and posts that establish that Harless attended Vancouver Arena events with Park and that the two appeared to be in a romantic relationship. Even if true, this is insufficient to show that Harless had a personal financial interest in Vancouver Arena.

B. Allegation: Personal Interests in Contracts Prohibited, Policy 100-36, Section 6.0A.

Section 6.0A states, in part:

No Councilmember shall participate in their capacity as a councilmember in the making of a contract in which the Councilmember has a personal interest, direct or indirect, or performs in regard to such a contract some function requiring the exercise of discretion on behalf of the City. Except

that this prohibition shall not apply where the councilmember has only a remote interest in the contract ... and where the fact and the extent of such interest is disclosed ... and thereafter the City Council authorizes ... the contract ... without counting the vote ... of the Councilmember(s) having the remote interest.

The Complaint does not allege any facts that would support a finding that Harless violated Section 6.0A. The Complaint does not allege facts that would demonstrate that Harless had a “personal interest” in Vancouver Arena’s LTAC grants. Significantly, the alleged facts also do not demonstrate that Harless had a “remote interest” in Vancouver Arena.

For purposes of Section 6.0A, a “remote interest” means:

1. That of a non-salaried officer of a non-profit corporation;
2. That of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary;
3. That of a landlord or tenant of a contracting party;
4. That of a holder of less than one percent of the shares of a corporation... or other entity which is a contracting party.

The Complaint does not allege any facts that would show that Harless was an officer, agent or employee of Vancouver Arena. Additionally, although the Complaint alleges that Harless and Park may have had a shared residence, it does not allege facts that would establish a landlord-tenant relationship.

Absent evidence that Harless had a personal or remote interest in Vancouver Arena, the Complaint cannot state a violation of Section 6.0A.

C. Allegation: Interest in contracts prohibited, RCW 42.23.030.

RCW 42.23.030 states, in part:

No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer ... or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any person beneficially interested therein.

The statute does not define beneficial interest. However, Policy 6.0B provides the following example: “A Councilmember is requested to vote to award a contract to a company that employs the Councilmember. If the Councilmember has a beneficial interest in the contract either direct or indirect such as through a business profit sharing plan, the contract cannot be approved.”

The example suggests that a beneficial interest means a personal financial interest. As explained above, the Complaint does not allege any facts that would establish that Harless had a personal

financial interest in Vancouver Arena. For this reason, the Complaint does not allege facts sufficient to state a violation of RCW 42.23.030.

D. Allegation: Avoidance of the Appearance of Impropriety, Policy 100-36, Section 5.0.

Section 5.0 states, in part:

All members of the City Council should conduct their official duties with integrity and impartiality and in a manner that avoids even the appearance of impropriety or a conflict of interest between public duties and private interests.

No Councilmember shall, by their conduct or participation in activities, give reasonable basis for the impression that any person can improperly influence the Councilmember or unduly enjoy the Councilmember's favor in the performance of official City actions, or that the Councilmember is affected in the performance of the official act or actions by the kinship, rank, or association with any person.

The Complaint alleges that Harless's conduct created an appearance of impropriety. Specifically, the Complaint alleges that Harless violated Policy 5.0 by failing to disclose her personal relationship with Park while presiding over and voting on LTAC grants for Vancouver Arena during the 2023, 2024 and 2025 grant cycles.

In support, the Complaint cites evidence, including photos and social media posts, that Harless and Park were involved in a personal and/or romantic relationship during the 2023, 2024 and 2025 grant cycles. The Complaint also alleges that Harless attended multiple Vancouver Arena events, including the 2025 GoFest event, for which Park received an LTAC grant. The Complaint also cites evidence showing that Park made a campaign donation to Harless in 2025 and assisted Harless at multiple campaign events in 2025.

These facts, if true, would substantiate a violation of Section 5.0. Although the facts may not establish that Harless had an actual conflict of interest, her conduct arguably created an appearance of impropriety. Additionally, her close personal relationship with Park, combined with her visible presence at Vancouver Arena events, could give the impression that Park unduly enjoyed Harless's favor or that Harless's LTAC grant decisions may have been affected by her relationship with Park.

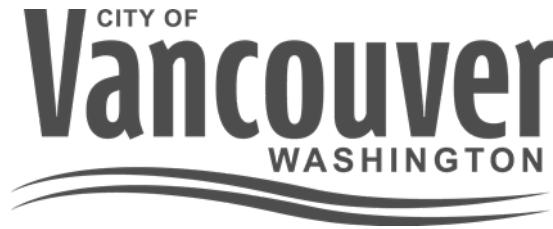
E. Allegation: Disclosure or Use of Confidential Information, Policy 100-36, Section 6.0C and G.

Section 6.0C states, in part: "A Councilmember shall not disclose or use any confidential, privileged, or proprietary information gained by reason of their position for a purpose other than a City purpose...."

Section 6.0G states: “A Councilmember shall not knowingly use their office or position to secure personal benefit, gain or profit, or use their position to secure special privileges or exceptions for themselves, or for the benefit, gain, or profits of any other persons.”

The Complaint alleges that the relationship between Harless and Park raises a “significant concern that Harless may have disclosed or used confidential, privileged, or proprietary information gained by reason of her position as the chair of LTAC, or assisted Park in drafting the grant requests.”

The Complaint does not allege any facts to support this claim and appears to be based on pure speculation. Accordingly, I conclude that the Complaint fails to state a violation of Section 6.0C (Disclosure of Confidential Information) or 6.0G (Improper use of Position Prohibited).



POLICY AND PROCEDURE

CITY OF VANCOUVER WASHINGTON	INDEX Administrative/Council/City Manager			
Subject	Number 100-36	Rev. C	Effective Date 12/13/21	Page 1 of 9
City Council Code of Ethics and Conduct	Supersedes 7/18/11	Prepared by: [City Manager]	Approved by: [Mayor]	

1.0 Purpose

The purpose of this policy is to establish a formal code of ethics by which Councilmembers will conduct themselves while serving on the Vancouver City Council.

2.0 Organizations Affected

City Council/City Manager

3.0 References

City Council Resolution M-3268, December 20, 1999
 City Council Resolution M-3741, July 18, 2011
 City Council Resolution M-4157, December 13, 2021

4.0 Declaration of Policy

It is essential to the proper administration and operation of the City of Vancouver that the City Council be and give the appearance of being independent and impartial; that elective office with the City of Vancouver not be used for personal benefit; and that the public have confidence in the integrity of the City. In recognition of these goals, the City has adopted this Code of Ethics, which is applicable to all members of the City Council.

The purpose of this Code is to establish standards of ethical conduct applicable to the City Councilmembers, including the Mayor, in the discharge of their duties by prescribing essential restrictions against conflict of interest and other conduct not consistent with good ethical practices while not creating unnecessary barriers to public service. To that end, Councilmembers should not be denied the opportunity available to

all other community members to acquire and maintain private economic interests, except in circumstances in which a conflict of interest would reasonably result.

It is required that all Councilmembers comply with the law and all other applicable rules and regulations governing the conduct of public officials. The standards in this Code shall not preclude other standards required by law including but not limited to, Ch.42.23 RCW- Code of Ethics for Municipal Officers-Contract Interests, Ch. 42.20 RCW- Misconduct of Public Officers and Ch. 42.36- Appearance of Fairness. Nothing in this Code of Ethics shall be construed to limit full compliance with applicable federal and state laws and applicable rules and regulations governing the conduct of public officials now existing or hereinafter enacted.

5.0 Avoidance of the Appearance of Impropriety

All members of the City Council should conduct their official duties with integrity and impartiality and in a manner that avoids even the appearance of impropriety or a conflict of interest between public duties and private interests.

No Councilmember shall, by their conduct or participation in activities, give reasonable basis for the impression that any person can improperly influence the Councilmember or unduly enjoy the Councilmember's favor in the performance of official City actions, or that the Councilmembers is affected in the performance of the official act or actions by the kinship, rank, or association with any person.

Example:

A Councilmember actively pursues the award of a city contract to a company owned by a close friend. Such activity gives the appearance of impropriety and should be avoided.

6.0 Standards of Ethical Conduct

A. Personal Interests in Contracts Prohibited

No Councilmember shall participate in their capacity as a councilmember in the making of a contract in which the Councilmember has a personal interest, direct or indirect, or performs in regard to such a contract some function requiring the exercise of discretion on behalf of the City. Except, that this prohibition shall not apply where the councilmember has only a remote interest in the contract as defined in RCW 42.23.040 and summarized below and where the fact and the extent of such interest is disclosed and noted in the official minutes or similar records of the City prior to formation of the contract and thereafter the City Council authorizes, approves, or ratifies the contract in good faith by a vote of its membership without counting the vote or votes of the Councilmember(s) having the remote interest

For purposes of this section, a "remote interest" means:

1. that of a non-salaried officer of a non-profit corporation;

2. that of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary;
3. that of a landlord or tenant of a contracting party;
4. that of a holder of less than one percent of the shares of a corporation, limited liability company or other entity which is a contracting party.

B. Personal Influence in Contract Selection Prohibited.

No Councilmember shall influence the City's selection of, or its conduct of business with, a corporation, person, or firm having or proposing to do business with the City if the Councilmember has a personal financial interest, direct or indirect in or with the corporation, person, or firm, unless such interest is a remote interest as defined in RCW 42.23.040 and summarized herein and where the fact and extent of such interest is disclosed and noted in the official minutes or similar records of the City prior to formation of the contract and thereafter the City Council authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the Councilmember(s) having the remote interest.

Example:

A Councilmember is requested to vote to award a contract to a company that employs the Councilmember. If the Councilmember has a beneficial interest in the contract either direct or indirect such as through a business profit sharing plan, the contract cannot be approved. If the Councilmember has no such interest and/or is subject to the remote interest rule, the Councilmember must disclose their interest and abstain from voting. Further, the Councilmember may not attempt to influence the votes of other Councilmembers. Questions regarding these kinds of situations should be directed to the City Attorney for review.

C. Disclosure of Confidential Information

A Councilmember shall not disclose or use any confidential, privileged, or proprietary information gained by reason of their position for a purpose other than a City purpose; provided, that nothing shall prohibit the disclosure or use of information which is a matter of public knowledge, or which is available to the public on request. Information obtained during Executive Sessions is deemed confidential.

Examples:

A Councilmember purchases land with advanced, undisclosed knowledge of the route of a new transit line that, when completed, will substantially increase the value of the land. The Councilmember's purchase of the land based on "inside" information violates this section off the Code of Ethics.

While having a conversation with Union leadership, a Councilmember discloses information discussed during Executive Session about labor negotiation strategy. The Councilmember's conduct violates this section's prohibition against disclosing information discussed in Executive Session.

D. Acceptance of Compensation, Gifts, Favors, Rewards, or Gratuity Prohibited.

1. City Councilmembers may not, directly or indirectly, give or receive, or agree to give or receive, any compensation, gift, favor, reward, or gratuity for a matter connected with or related to the officer's performance of official duties for the city. Prohibited conduct includes, but is not limited to, the following:

- a. Accepting cash or other cash equivalents such as gift cards or gift certificates regardless of value except as part of an internal, recognized, and sanctioned city incentive program.
- b. Accepting gifts, gratuities, loans, entertainment or other items of value from anyone with whom the city regularly transacts business, who has or seeks a contract with the city, or who desires other official action from the city.
- c. Giving, offering or promising anything of value to a customer, a potential customer, or a financial institution in connection with any transaction or business that the city may have with that customer, potential customer, or financial institution.
- d. Misusing confidential city information or disclosing such information to any individual who does not have a need to know the information.
- e. Using the city's name, account or credit to purchase merchandise for personal use

2. Exceptions. The prohibition regarding accepting compensation, gifts, or rewards shall not apply to:

- a. Receiving items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made to gain or maintain influence;
- b. Receiving items exchanged equally among Councilmembers at a social event hosted or sponsored by an officer of the city for other officers or employees of the city.
- c. Receiving items of nominal value provided for advertising purposes such as pens, calendars, or items received at a conference;
- d. Payment by a governmental or non-governmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance or trade mission made in an official capacity. Reasonable expenses are limited to travel, lodging and subsistence expenses incurred the day before through the day after the event;
- e. Payment of fees and reasonable travel expenses for attending seminars or educational programs sponsored by a government or *bona fide* non-profit professional, educational, trade or charitable association or institution. Reasonable expenses are limited to travel, lodging and subsistence expenses incurred the day before through the day after the event;
- f. Discounts available to the individual as a member of a group, occupation or similar broad-based group;

- g. Awards, prizes, scholarships or other items provided in recognition of academic, sport, or scientific achievement;
- h. Attendance of the Councilmember at a hosted meal where official attendance by the Councilmember as a city representative is appropriate;
- i. Campaign contributions that are in compliance with Chapter 42.17 RCW.

Example:

The Anyname Company has submitted a bid on a City project. The President of Anyname approaches a City Councilmember and promises that if their firm is the successful contract bidder, they will buy supplies from a firm owned by the Councilmember. The Councilmember promises to use their position to secure the contract for Anyname. Such actions are a violation of this section of the Ethics Code.

E. Certain Employment Prohibited.

No City Councilmember shall engage in or accept employment or render services for any employer when such employment or service creates a conflict of interest with a duty owed to the city or conflicts with the proper discharge of official city duties.

Example:

A Councilmember, who is also a real estate agent, represents a client who is in competition with the City for a parcel of land. The Councilmember is in violation of this section of the Code of Ethics.

F. Personal Interest in Legislation Prohibited.

No City Councilmember shall benefit either directly or indirectly from any legislation or have a financial interest in any legislation coming before the City Council nor participate in discussion with or give an opinion on such legislation, unless such interest is a remote interest as defined in this section and where the fact and extent of such interest is disclosed and noted on the record of the Council, or similar records of the City prior to consideration of the legislation by the City Council. City Councilmembers' participation in the enactment of legislation shall be governed by Ch. 42.23 RCW- the Code of Ethics for Municipal Officers and Ch. 42.36 RCW- The Appearance of Fairness Doctrine. City Councilmembers shall not be prohibited from participating in the adoption of legislation when the Councilmember has only a remote interest in the legislation as defined in this section, which has been disclosed, and the legislation is applicable to the general public and not of specific or unique benefit to the Councilmember. Questions regarding these kinds of situations should be directed to the City Attorney for review.

G. Improper Use of Position Prohibited.

A Councilmember shall not knowingly use their office or position to secure personal benefit, gain or profit, or use their position to secure special privileges or exceptions for themselves, or for the benefit, gain, or profits of any other persons.

H. Improper Use of City Personnel Prohibited.

A Councilmember shall not employ or use any person under their official control or direction for personal benefit, gain, or profit.

I. Improper Use of City Property Prohibited.

A City Councilmember shall not use city-owned vehicles, equipment, materials, money, or property for personal or private convenience or profit. Such use is restricted to those city services that are available to the public generally, for the authorized conduct of official business or for such purposes and under such conditions as are approved by the city council, city manager or designee.

A Councilmember shall not utilize the City's name, letterhead or logo for the purpose of endorsing any political candidate, business, commercial product, or service.

7.0 Harassment Prevention

A. Policy: harassment prohibited.

The City of Vancouver is committed to providing a diverse work environment free from discrimination and harassment where all people are treated, and are expected to treat others, with dignity and respect. The City does not condone or tolerate discriminatory, harassing, retaliatory, intimidating, offensive, or disrespectful conduct. Councilmembers have a responsibility to assist in this commitment by modeling appropriate conduct, and refraining from engaging in harassing conduct directed at an individual because of their race, religion, color, national origin, pregnancy, military status, age, gender, sexual orientation, marital status and/or the presence of any physical or mental disability and/or any other status protected by law. Such harassing conduct is strictly prohibited. Any conduct which may be construed as retaliation against an individual because they made a complaint of harassment is also strictly prohibited.

B. Definitions and Guidelines.

1. "Harassing Conduct." As a general rule, harassing conduct includes behavior that is demeaning, insulting, offensive or intimidating. It can include verbal conduct such as unwanted sexual or racist comments; non-verbal behavior such as suggestive looks; and physical behavior such as pats, squeezes or brushing against someone's body. The conduct will be considered harassing and a violation of this policy if it is offensive or unwelcome, even if the conduct was not intended to be harassing.

Harassing conduct can take many forms. It can include:

- Demeaning, insulting, intimidating, or sexually suggestive written, recorded or electronically transmitted messages;
- Using demeaning or inappropriate names or labels that others find offensive;
- Making vulgar comments, using profane language, using indecent gestures or discussing sexual activities;
- Unwanted physical contact or conduct of any kind, including sexual flirtations, touching, advances, or propositions;
- Verbal abuse of any kind;
- The display of demeaning, insulting or sexually suggestive objects or pictures, including nude photographs;
- Blaming victims of harassment for causing the problem; or
- Continuing offensive behaviors after one has objected to that behavior.

2. “Retaliation.” Retaliation is any action taken to punish an individual for making a complaint of harassment or to obtain revenge for making the complaint is retaliation, even if the complaint is unfounded.

Examples of retaliatory conduct include any of the following when made for making a complaint of harassing conduct:

- Harassing or intimidating an individual in any way;
- Making or encouraging unjustified disciplinary action;
- Directly or indirectly encouraging others to retaliate against an individual who has made a complaint of harassment; or
- Making or encouraging any action which is detrimental to the employee’s job such as a demotion, a poor performance evaluation, or making it difficult for the employee to perform job duties.

This Policy applies equally to all Council members regardless of whether they are working inside City Hall or within the community.

8.0 Impermissible Conduct After Leaving City Office

A. Disclosure of Privileged, Confidential, or Proprietary Information Prohibited.

No former City Councilmember shall disclose or use for their personal gain or that of any other person any privileged, confidential, or proprietary information gained because of their City office .

B. Participation in City Matters Prohibited.

No former City Councilmember shall, during the period of one year after leaving office:

1. Assist any person in matters involving the city if, while in the course of duty with the city, the former Councilmember was officially involved in the matter, or personally and substantially participated in the matter, or acted on the matter; or.
2. Represent any person as an advocate in any matter in which the former Councilmember was involved while a Councilmember; or
3. Participate as or with a bidder, vendor, or consultant in any competitive selection process for a city contract in which he or she assisted the city in determining the project, or work to be done or the process to be used.

9.0 Violation of the Code of Ethics

Any person who has information that a Councilmember may have violated the Code of Ethics shall provide that information in writing to the City Council and the City Manager. The written complaint must be based substantially upon the personal knowledge of the complainant and signed by the person filing the complaint. No action will be taken on any complaint which is filed later than three (3) years after a violation of the Code of Ethics is alleged to have occurred.

Upon receipt of the complaint, the City Council, and/or the City Manager shall provide it to the City Attorney who shall promptly review the information and determine whether the complaint, on its face, alleges facts that, if true, would substantiate a violation of the Code of Ethics and shall report back to the Council in writing. The City Council at its next regular meeting, shall review the City Attorney's report and make a determination as to whether or not the Council shall refer the allegation(s) to a Hearings Examiner designated by the Council to conduct an investigation.

If so referred, the Hearings Examiner shall conduct an investigation of the complaint and prepare written findings and conclusions within sixty 60 days of the date the complaint was received by the City unless an extension is granted by the Council. The Councilmember accused of the ethics violation shall have the right to review any and all information obtained as a result of the investigation and shall have the right to respond in writing to the complaint which information shall be reviewed and taken into consideration by the Hearings Examiner.

Upon completion of the investigation, the Hearings Examiner shall issue an advisory report to the Council for its consideration as well as to the City Manager and City Attorney. The report shall set forth findings and conclusions demonstrating whether or not, based on a preponderance of the evidence, the councilmember has violated the Code of Ethics.

Within 5 (five) business days of the receipt of the report, the City Manager shall provide copies of the report via certified mail to the complaining party and to the Councilmember against whom the complaint was filed at their last known addresses.

Within fifteen (15) business days of the receipt of the report, the Council (excluding the accused Councilmember) shall convene to review the alleged violation and the report and take action. Action may include the following: 1.) dismissal of the complaint on the basis that no violation of the Code of Ethics has occurred; or 2.) remand to the Hearings Examiner to obtain additional information in order for the Council to decide whether a violation has occurred; or 3.) a determination that by a preponderance of the evidence, a violation of the Code of Ethics has occurred in which case the Council shall adopt written findings, conclusions and appropriate sanctions as forth herein.

Adoption of the findings, conclusions and sanction(s) by the City Council shall be by majority vote; provided that the Councilmember accused of the violation shall not vote on any matter involving that member; and provided further that in the event the Mayor is accused of the violation, the Mayor Pro Tempore shall act in the Mayor's stead.

Within 5 (five) business days thereafter, the City Manager shall provide copies of the Council's findings, conclusions and sanction(s) via certified mail to the complaining party and to the Councilmember against whom the complaint was filed at their last known addresses. No final disposition of the matter will be implemented for a period of 10 (ten) days to allow the Councilmember against whom the complaint was filed to request a review of the Council's decision. Such a request shall be submitted to the City Manager in writing and shall state the reasons for their objections and request a review of the action taken. The Council shall review the action taken in light of the findings and conclusions and request for review and may take whatever further action, if any, appears appropriate under the circumstances. The action of the Council shall be final and not subject to further review or appeal except as may otherwise be provided by law.

Action by Council may take any of the following sanctions:

1. Admonition. An admonition shall be verbal non-public statement made by the Mayor to the member.
2. Reprimand. A reprimand shall be administered to the Councilmember by letter. The letter shall be prepared by the City Council and shall be signed by the Mayor.
3. Censure. A censure shall be a written statement administered personally to the member. The individual shall appear at a time and place directed by the City Council to receive the censure. It shall be given publicly, and the member shall not make any statement in support of or in opposition thereto or in mitigation thereof. A censure shall be deemed administered at the time it is scheduled whether or not the member appears as required.
4. Other sanctions. Any sanction imposed under this Code of Ethics is in addition to and not in lieu of any other penalty, sanction or remedy which may be imposed or sought according to law or equity, including, but not limited to:

- (a) Declaration of vacancy by City Council pursuant to Charter Sections 2.02 or 2.06.
- (b) Voiding of a contract entered into in violation of Charter Section 11.07 (Personal Interest)
- (c) Forfeiture of office for violation of Charter Section 11.07 (Personal Interest)
- (d) Civil penalties of \$500 and possible forfeiture of office pursuant to RCW 42.23.050.
- (e) Removal or recall from office pursuant to state law.
- (f) Removal from leadership positions, boards and commissions and other official positions or duties that do not conflict with Washington statutes.
- (g) Initiation of appropriate civil actions against any person member who violates this Code.
- (h) Injunctive relief to ensure that violation of this Code or of other provisions of law cease and desist.

C:\C\Procedure 100-36 Ethics Policy

CITY OF VANCOUVER WASHINGTON	INDEX Administrative/Council/City Manager			
Subject Council Appointment of Community Members to Boards, Commissions, Advisory Committees and Work Groups	Number 100-06	Rev. G	Effective Date 7/7/25	Page 1 of 10
	Supersedes 06/06/22	Prepared by: 	Approved by: 	

1.0 Purpose

The purpose of this policy is to establish policies guiding the appointment of community members to serve on city boards, commissions, advisory committees and work groups.

2.0 Organizations Affected

All boards, commissions, advisory committees, and work groups.

3.0 References

Resolution No. M-1751, March 25, 1974
Resolution No. M-2386, February 2, 1984
Memorandum to Mayor and City Council, April 15, 1998
Resolution No. M-3179, June 15, 1999
Resolution No. M-3254, November 22, 1999
Resolution No. M-3298, July 3, 2000
Resolution No. M-3347, June 25, 2001
Resolution No. M-3460, July 12, 2004
Resolution No. M-3607, April 16, 2007
Resolution No. M-3730, January 3, 2011
Resolution No. M-3980, September 24, 2018
Resolution No. M-4157, December 13, 2021
Resolution No. M-4172, June 6, 2022
Resolution No. M-4342, July 7, 2025

4.0 Declaration of Policy

The City of Vancouver's boards, commissions, committees and work groups provide an invaluable service to the City. Their advice on a variety of subjects aids the Mayor and Councilmembers in the decision-making process. Effective community member participation is an invaluable tool for local government.

City regulatory and advisory bodies provide an opportunity for community members who want to participate in public service to be involved in governmental boards, commissions, committees and work groups. These bodies can also serve as a training ground or stepping-stone for qualified persons who are interested in seeking public office.

4.1 Authority

The City Council of the City of Vancouver is specifically empowered by state law, City Charter, and ordinance to fill by appointment all boards and commissions established by such state law, charter or ordinance, or such other advisory boards or commissions as the Council deems necessary or advisable. In the exercise of this power, it is the desire of the City Council to establish an equitable and consistent policy in its decision-making role to fairly select community members who desire to serve on boards or commissions. To this end, this policy has been created, and it shall remain in effect until such time as the City Council desires to amend or modify it in part or revoke it in whole.

The City Manager is responsible for the oversight and administration of the process by which the advisory boards and commissions program is managed. The City Manager shall assign primary coordination of the Boards and Commissions program to a staff member within the City Manager's Office, who shall conduct community outreach and recruitment activities for all forecast board, commission, committee or work group vacancies.

4.2 Term Limits

Terms for all advisory bodies are for a period of four (4) years, unless superseded by other regulatory provision(s) or legal authority. Appointees to City advisory bodies may be reappointed once for a maximum of two (2) terms. The City Manager's staff shall establish procedures for reappointment requests in alignment with the full recruitment process.

Appointments to an unexpired term of less than half the length of the full term, up to two (2) years, shall not be considered as a full term in these criteria. Appointments for any length over this shall be considered a full term.

If a candidate is selected to fill the remainder of an unexpired term of six (6) months or less, their appointment shall be for the unexpired term plus the next full term.

5.0 Definitions

5.1 Public Development Authority/ Public Corporation

A public development authority is an independent legal entity established pursuant to state statute (RCW 35.21.730 - .755) to administer and execute federal grants or programs and to receive and administer other public and private funds in order to accomplish a public purpose. Authorities include the Downtown Redevelopment Authority and the City Center Redevelopment Authority.

5.2 Board

A semi-autonomous body established pursuant to federal or state statute or authority or city ordinance. Actions of a board are usually appealable to designated courts of law. Boards related to city affairs include Building and Fire Code Commission, Public Facilities District Board of Directors, Vancouver Housing Authority Board, Fort Vancouver Regional Library Board, and Clark County Mosquito Control Board.

5.3 Commission

A body established by city ordinance to study and recommend action to the City Council. Authority of commissions is delegated from Council or, in the case of telecommunications, solid waste, or historic preservation, in conjunction with the County Commissioners. Other authority are in conjunction with the County Commissioners as having designated seat(s) on a County body, such as the Clark County Arts Commission or the Clark County Public Health Advisory Council. With the exception of the Civil Service Commission, some actions of commissioners are appealed directly to City Council. Commissions established by city ordinances include City/County Telecommunications Commission, Culture, Arts and Heritage Commission, Civil Service Commission, Parks and Recreation Advisory Commission, Planning Commission, Transportation and Mobility Commission, Salary Review Commission, and Urban Forestry Commission.

5.4 Committee

A body appointed by Council with a specified task or function. Committee action ordinarily will be subjected to review and/or appeal to City Council or to a commission established by Council. City of Vancouver committees include the Aviation Advisory Committee, Charter Review Committee, Lodging Tax Advisory Committee, Parking Advisory Committee, and the PDX Citizen Noise Advisory Committee.

5.5 Ad Hoc Work Group

A body appointed by Council to study or work on a particular subject or problem. A work group will cease to exist upon completion of its charge as given by the Council. Examples of previously appointed work group bodies are the Water/Sewer Rate Task Force and the Cruising Task Force.

6.0 Formation and Dissolution of Committees

6.1 Establishment

These advisory bodies originate from different sources. Some are established by ordinance while others are established by motion of the City Council. It is at the discretion of the Council as to whether or not any advisory body should be established by ordinance. See Attachment A for the current list of City Advisory Committees.

6.2 Statement of Purpose and Function

Every advisory body, when it is formed, will have a specific statement of purpose and function, which will be re-examined periodically by City Council to determine its effectiveness. This statement of purpose is made available to all community members when they are appointed.

6.3 Size

The size of each advisory group is determined by City Council and the size is related to its duties and responsibilities.

6.4 Periodic Review

On a four-year cycle, established boards, commissions and committees will be evaluated by the City Manager in consultation with the Mayor and Mayor Pro-Tem. The schedule of review of each body will be staggered in a rational manner to prevent all bodies from being under review simultaneously. Review will examine the bodies' purpose and compliance with their respective bylaws, Vancouver Municipal Code, Council policy, and other pertinent governing documents and legislation. The system of evaluation will be determined by the City Manager in consultation with the Mayor and Mayor Pro Tem. The City Manager shall prepare a report to the Council summarizing the review, including any recommended actions.

Upon Council direction, such evaluation of an individual board, commission, or committee may take place outside of the regular four-year cycle if the Council deems it necessary to do so.

6.5 Dissolution

City Council may dissolve any advisory body that, in their opinion, is no longer necessary to the work of the city, is not functioning as intended or for any other reason.

7.0 Initial Appointment Criteria

Every Board, Commission, Advisory Committee and Work Group formed by the City is an opportunity to build credibility and trust with community members. Accountability in these structures is a foundational element of equitable engagement. To this end, it shall be the policy of the City Council to evaluate each applicant for appointment on an objective basis, utilizing the following criteria:

Equity and Inclusion (EI) – In the context of appointing community members to City Boards, Commissions, Advisory Committees, and Work Groups, the City’s commitment to advancing equity and inclusion is as follows:

- a) Demographic Diversity – The committees convened by the City should reflect the city's current demographic diversity, including, but not limited to, race, ethnicity, gender, socioeconomic status, age, disability, geography, and lived experiences.

When conducting outreach to solicit interest from the community as prospective committee members, the City should specifically focus on communities currently and historically excluded from public decision-making processes. These include “underrecognized and underrepresented communities,” which the City defines as populations that have been marginalized and are experiencing systemic and institutional barriers resulting in disparate outcomes (in health, education, housing, employment, etc.). These populations consist of, but are not limited to, communities of color, youth, immigrants, and refugees, disabled, low-income, lesbian, gay, bisexual, transgender, and queer communities, and those who are unhoused.

- b) Equity – The City defines equity as ensuring that all individuals are treated fairly and have equal access to opportunities and advancement without facing barriers. This principle recognizes that some groups may have been historically underrepresented or underrecognized, and therefore, fairness in addressing these imbalanced conditions is necessary to provide equal opportunities to all groups.

In the context of community involvement, equitable approaches center the voices of those most impacted, identify and analyze the unique needs of specific populations in relationship to an issue or decision, and ensure that identity (e.g., race or ethnicity) is not a predictor of outcomes.

- c) Inclusion and Access – The City strives to ensure that all community members can be a part of decisions regarding programs, activities, and services that may affect them. Inclusion grants the public opportunities to impact decisions, and their concerns will be considered. Decision-makers intentionally search for and facilitate the involvement of those most negatively affected by disparities in outcomes and decisions.

Residency - Appointments to certain boards and commissions must, by state law or local ordinance, be limited to residents of the City of Vancouver. It is preferable that all appointments be filled by city residents. However, persons living outside the City of Vancouver may be considered and appointed to positions not legally restricted to city residents when determined appropriate by the Council.

City Employment – City employees will not be appointed to City boards, committees, commissions, and work groups, but they may apply and be considered appointment to non-City bodies. The City Council may choose to nominate a City staff member to serve as the City representative on Clark County Advisory Commissions.

Contributive Potential – City Council shall evaluate the potential contribution that each applicant may make if appointed to a board or commission. Factors to guide Council in its evaluation of this could include evaluation of an applicant's.

- a) Commitment to advancing City Council goals of equity, resilience, and community safety in relevant decision-making processes.
- b) Ability to develop and form decisions based on factual information and decision-making criteria in addition to an ability to express ideas, concepts or philosophies.
- c) Lived experience in the community and/or history of service on other boards, commissions, advisory committees, work groups, committees, or informal community involvement. A highly prioritized applicant may describe expertise and involvement with formal structures, like Parent Teacher Associations, neighborhood or business associations, or history with volunteering, for example, in their faith community. There are also trusted community members who may be sources of connection because they support other needs in community, including community-based childcare systems, coach their children's teams, or engage in activism around community-identified issues.
- d) Ability to apply personal and professional knowledge, experiences, skills, perspectives, and values for the benefit of the broader community. (A successful applicant may describe formal education or professional experience that demonstrate expertise. Applicants may also describe "informal" experiences, including social and environmental backgrounds that also demonstrate important skills and expertise. For example, houseless or formerly unhoused people may bring both the expertise from understanding the experiences and challenges of these populations, but also the ingenuity, creativity, perseverance, and social skills necessary day to day.
- e) Ability to help the City connect with diverse community voices. Communities connect and stay connected in many ways, and looking for both traditional examples, like volunteer management, leadership in faith communities, or outreach and organizing experience (with a community-based organization, or around a particular issue of concern) may demonstrate existing relationships beneficial to ensuring the committee is reaching many audiences. For many communities, connections also occur outside of these structures and activities as well, including in spaces like multifamily housing where resources may be shared, or the barbershop or hair salon, or coffee shop where community comes together. This may also include communities where elders serve as vital connections.
- f) Understanding of, and appreciation for, the responsibility of participating on a public board and the transparency and public nature of deliberation and decision-making that

this requires. Applicants should demonstrate a commitment to operating within the scope of assigned Board, Commission, Advisory Committee or Work Group.

- g) Commitment to inclusive and thoughtful behavior in all interactions with other Commissioners, applicants, community members and City staff.
- h) Commitment to an open process that includes the many voices that are part of our community and incorporates community participation and community engagement.
- i) Ability to take a long-term view and consider individual projects and policy decisions in the context of how they contribute to the City's overall growth and development over a 20–50-year time horizon.
- j) Ability to consider different perspectives on an issue and balance multiple perspectives when developing a recommendation.
- k) Commitment to environmental stewardship that honors and reflects the history of the land, water, air and natural world upon which we exist and depend.

Time Available to Serve – Individuals applying to serve on boards, commissions, advisory committees, and work groups must have a willingness to commit to regular and consistent attendance and participation at meetings throughout assigned term of appointment. It is requested that applicants consider their capacity when applying. Applicants are invited to raise any questions or concerns regarding accessibility, scheduling, or accommodations during the recruitment process.

Diverse Sectional Composition – Maintaining a diverse balance of community representation is recognized as a desirable goal in the appointment of community members to boards, commissions, advisory committees, and work groups when applicable. Specifically, diversity of knowledge, experiences, skills, perspectives, and values that enhance the level of representative perspectives included on the applicable Board, Commission, Advisory Committee or Work Group. This may include a variety of characteristics and experiences, including: diversity in demographic and socioeconomic characteristics; diversity of housing tenure experiences (rental, homeownership, houselessness, etc.); diversity in length of time living in the region and city/region/country of origin; diversity of educational and professional experience; diversity in geographic location where members live and work around the City and region; diversity of primary mode of transportation; and/or diversity in volunteer and philanthropic affiliations.

In order to maximize participation across multiple spectrums of the community, appointees to community member boards, commissions, committees and work groups serve on only one committee, unless qualified applicants cannot be identified, or other special circumstances are identified.

8.0 Reappointment

Incumbents who wish to be reappointed and who are eligible for reappointment in accordance with the provisions of section 4.2 shall provide a Letter of Continued Interest to the staff liaison and chair of that board or commission within 60 days prior to the expiration of their term. There is not a vested right to reappointment for any position.

The staff liaison and board/commission chair will forward their recommendation to reappoint or not reappoint to the Council subcommittee. Their recommendation will consider the following into their decision:

- a) Regularity of attendance.
- b) Understanding of committee or commission function.
- c) Effectiveness.
- d) Demonstrated contribution during past term of office on issues, programs, policies, etc., of the advisory board, committee or commission.
- e) Number of terms served.

The final decision to appoint an incumbent is at the City Council's discretion. If the incumbent is not selected for reappointment, then staff will open the seat for recruitment and assessed through the appointment process outlined in section 9.0.

9.0 Assessment of Applicant Pool and Recommendation for Appointment

Following the application period, the Mayor, and City Council Committees, assigned per City Council Policy 100-33, shall be responsible for evaluating candidates and forwarding recommendations to the City Council for appointment to fill forecasted vacancies and/or reappointment requests on advisory boards, committees, commissions and work groups.

After review of an applicant pool for a board or commission, the staff liaison and chair will forward two (2) applicants and an alternate for interview to city manager staff. City manager staff will then forward the two applicants and alternate as well as all the applications submitted to the subcommittee. If after seven (7) business days no request has been made from a subcommittee member to interview additional applications to city manager staff other than the final two applicants and alternate, city manager staff will schedule the final two applicants and alternate for interview by the subcommittee.

Upon conclusion of such evaluation, the Council subcommittee members will notify the City Manager's staff as to which candidate(s) they wish to recommend to the full Council for appointment and/or reappointment.

Unless specified in Section 9.1, the City Council Subcommittees are responsible for the evaluation and appointment recommendations for all appointed boards, committees, commissions, and work groups. In the event a recruitment pertains to at least a quorum of the total number of positions of the subject board, committee, commission or work group, both Council subcommittees will be engaged to evaluate candidates and provide appointment recommendations.

Ad hoc committees formed to focus on shorter-term issues, such as the Strategic Plan, shall be appointed by the City Manager.

9.1 Mayoral Authority in Evaluating Candidates and Making Appointments

The Mayor shall evaluate and directly appoint members to the following bodies:

- Vancouver Housing Authority (per RCW 35.82.040)
- Civil Service Commission (per VMC 2.57.010)

Subject to City Council final approval, the Mayor shall evaluate and appoint members to the following bodies:

- Charter Review Committee (per City Charter Section 11.17)
- Parks and Recreation Advisory Committee (per VMC 2.16.010; City Charter Section 8.05)
- Salary Review Commission (per City Charter Section 2.18)

9.2 Council Appointment

Council subcommittee recommendations are brought forward for consideration by the full City Council at a Council meeting. The appointment or reappointment will appear on the Council's Consent Agenda for the scheduled meeting date.

Members of all boards and commissions subject to Council approval will be appointed by a majority vote of the Council.

9.3 Notification of Council Decision

Each applicant and relevant Staff Liaison(s) shall be notified of the decision of the Council within three (3) business days of the Council action on the proposed appointment(s) at a Council meeting.

9.4 Records

The City Manager's Office shall maintain all records associated with advisory board and commission recruitments and appointments in accordance with the Public Records Act and related retention requirements.

9.5 Recognition

The Mayor will send a certificate of appreciation and letter of thanks to each member of a board or commission upon the completion of a term.

10.0 Council Concerns about Recommendations

Councilmembers should raise any concerns about any recommendation with the Mayor prior to the City Council meeting that is scheduled for the approval of the appointment.

11.0 Removal of Members

Council may terminate any Council-confirmed appointment prior to the expiration of that member's term of office by a majority vote of the City Council if the Council finds cause for removal, unless otherwise provided for in governing bylaws, and city, state or federal law applicable to the City board, commission, advisory committee, or work group at issue.

12.0 Overlapping Terms Intended

Lengths of terms by board/commission are to be for a period of four (4) years, unless superseded by regulatory provision(s) or legal authority, but in all cases, overlapping terms are intended. On special work groups, where a specific project is the purpose, there need not be a specified term of office.

13.0 Committee Operation

City Council expects new members will be oriented to the roles and responsibilities of their appointment.

14.0 Yearly Report to City Council

Each Committee should make a report to City Council each year. This report need not be presented in person.

15.0 Lobbying Efforts Consistent with City Policy

Lobbying efforts by any advisory bodies on legislative or political matters should first be checked for consistency with existing City policy by contacting the City Manager's office. In the event a position is taken that differs from that of the City's policy, an advisory body acting as an official body of the City of Vancouver cannot represent that position before another body, i.e., the State Legislature or the Clark County Board of Commissioners. An individual member is free to voice a position, oral or written, on any issue as long as it is made clear that they are not speaking as a representative of the City of Vancouver, or as a member of their commission, committee or work group.

ATTACHMENT A
CITY OF VANCOUVER BOARDS, COMMISSIONS, ADVISORY COMMITTEES
AND WORK GROUPS

Body	Appointing Authority	Governing Legislation
Aviation Advisory Committee	City Council	VMC 10.05.040
Building & Fire Code Commission	City Council	VMC 17.08.040
City Center Redevelopment Authority Board of Directors	City Council	VMC 2.71.080
Charter Review Committee	Mayor, with City Council approval	City Charter Section 11.17
Civil Service Commission	Mayor	VMC 2.57.010
Clark County Arts Commission (1 seat)	Clark County Council upon nomination by City Council	Clark County Resolution # 2010-03-07
Clark County Historic Preservation Commission (2 seats)	City Council	VMC 20.220.050; Clark County Ordinance 40.250.030
Clark County Mosquito Control Board of Trustees (1 seat)	Clark County Council upon nomination by City Council	RCW 17.28.110
Clark County Public Health Advisory Council (1 seat)	Clark County Board of Health upon nomination by Council	RCW 70.46.140
Culture, Arts and Heritage Commission	City Council	VMC 2.88
Downtown Redevelopment Authority Board of Directors	City Council	VMC 2.73.010
Fort Vancouver Regional Library Board of Trustees	Clark, Skamania and Klickitat county Councils upon nomination by City Council	RCW 27.12.190; Charter Section 8.06
Lodging Tax Advisory Committee	City Council	RCW 67.28.1817
Parking Advisory Committee	City Council	VMC 2.63.020
Parks and Recreation Advisory Commission	Mayor, with City Council approval	VMC 2.16.010; Charter 8.05
PDX Citizen Noise Advisory Committee	City Council	Port of Portland Port Executive Director
Planning Commission	Mayor, with City Council approval	VMC 20.220.010; Charter 8.02
Public Facilities District Board of Directors	City Council	RCW 35.57.010
Salary Review Commission	Mayor, with City Council approval	City Charter Section 2.18
(City/County) Telecommunications Commission	Mayor, with City Council approval	VMC 5.19.300
Transportation and Mobility Commission	Mayor, with City Council approval	VMC 11.75

Urban Forestry Commission	City Council	VMC 12.02.010
Vancouver Housing Authority Board of Commissioners	Mayor	RCW 35.82.040; Charter Section 8.04