



***BID AND CONTRACT DOCUMENTS
AND SPECIFICATIONS
FOR***

TRAFFIC CONTROL CENTER (TCC)

***PROJECT # 202
RFB # 19-005
Federal Aid # CM-HSIP-000S(464)***

***City of Federal Way
PUBLIC WORKS DEPARTMENT
33325 8th Avenue South
Federal Way, WA 98003***

**BID AND CONTRACT DOCUMENTS AND SPECIFICATIONS
FOR
TRAFFIC CONTROL CENTER (TCC)**

**PROJECT # 202
RFB # 19-005
Federal Aid # CM-HSIP-000S(464)**

Bids Accepted Until 10:00 a.m., August 9, 2019

At:
City of Federal Way
33325 8th Avenue South
Federal Way, WA 98003



Prepared By:
Transpo Group
12131 113th Ave NE #203
Kirkland, WA 98034

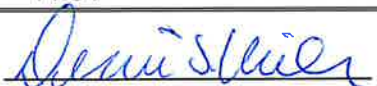
APPROVED FOR CONSTRUCTION	
	<u>7/16/19</u>
Desiree S. Winkler, P.E. Deputy Public Works Director	Date

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ADVERTISEMENT FOR BIDS **TRAFFIC CONTROL CENTER (TCC)**

SUBMITTAL OF SEALED BIDS: Notice is hereby given that the City of Federal Way will receive sealed bids through August 9, 2019, at 10:00 a.m. at the City Hall Finance Department at 33325 8th Avenue South, Federal Way, Washington 98003. Proposals received after said date and time will not be considered. All timely bids will be opened and read publicly aloud in the Hylebos Conference Room, City Hall 33325 8th Avenue South, Federal Way, Washington 98003 at 10:05 (TIME) a.m. on August 9, 2019.

This project shall consist of: modifications to an existing small conference room into a Traffic Control Center (TCC), including architectural, mechanical, and electrical improvements.

The City anticipates awarding this project to the successful bidder and intends to give Notice to Proceed as soon as the Contract and all required documents are executed in full. Regardless of the date of award or Notice to Proceed, the Contractor must complete all work within 20 working days.

BID DOCUMENTS: Plans, Specifications, Addenda, and plan holders list are available on-line through Builders Exchange of Washington at www.bxwa.com. Click on: "Posted Projects," "Public Works," and "City of Federal Way." It is recommended that Bidders "Register" in order to receive automatic e-mail notification of future addenda and to place themselves on the "Bidders List." Bidders that do not register will need to periodically check on-line for addenda issued on this project. Contact Builders Exchange of Washington at (425) 258-1303 if you require assistance with access or registration. An informational copy of plans, specifications, and addenda are available for viewing only at the City of Federal Way Finance Department.

QUESTIONS: Any questions must be directed to Desiree Winkler, Deputy Public Works Director, by email at desiree.winkler@cityoffederalway.com, or by letter addressed to same. Questions must be received by the City no later than 5:00 p.m. three business days preceding the bid opening to allow a written reply to reach all prospective Bidders before the submission of bids.

OTHER PROVISIONS: All bids and this Project shall be governed by the Contract, as defined by the Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction 2018 (Standard Specifications), which is incorporated by this reference as though set forth in full.

All bid proposals shall be in accordance with the Contract and all bid proposals shall be accompanied by a bid deposit or bond in the amount required in the Contract. Forfeiture of the proposal bond or deposit to the City shall be in accordance with the Contract.

The City, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49 C.F.R., Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award. The City encourages minority and women-owned firms to submit bids consistent with the City's policy to ensure that such firms are afforded the maximum practicable opportunity to compete for and obtain public contracts.

The City of Federal Way reserves the right to reject any and all bids, waive any informalities or minor irregularities in the bidding, and determine which bid or bidder meets the criteria set forth in the bid documents.

DATES OF PUBLICATION:

Daily Journal of Commerce
Federal Way Mirror

Publish July 19, 2019 and July 26, 2019
Publish July 19, 2019 and July 26, 2019

INSTRUCTIONS TO BIDDERS & CHECKLISTS

(1) ADVERTISEMENT FOR BIDS AND CONTRACT DOCUMENTS

The Advertisement for Bids and Contract Documents contain bidder instructions that must be complied with.

(2) EXAMINATION OF BID AND CONTRACT DOCUMENTS – BIDDER RESPONSIBILITIES

The submission of a bid shall constitute an acknowledgment upon which the City may rely that the bidder has thoroughly examined and is familiar with the bid and Contract Documents, the Project site, the availability of materials and labor, publically available information, and has reviewed and inspected all applicable federal, state, and local statutes, regulations, ordinances and resolutions dealing with or related to the equipment and/or services to be provided herein. The failure or neglect of a bidder to examine such documents, statutes, regulations, ordinances or resolutions shall in no way relieve the bidder from any obligations with respect to the bidder's bid or the contract documents. No claim for additional compensation will be allowed which is based upon a lack of knowledge of any contract documents, statutes, regulations, ordinances or resolutions. Bidders shall visit delivery and service locations(s) as required. Bidders shall become familiar with and verify any environmental factors, which may impact current or future prices for this requirement.

(3) INTERPRETATION OF BID AND CONTRACT DOCUMENTS

No oral clarifications, interpretations, or representation will be made to any bidder as to the meaning of the bid or Contract Documents. Bidders shall not rely upon any oral statement or conversation they may have with City's employees, agents, representatives, consultants, or design professionals regarding the Contract Documents, whether at the pre-bid meeting or otherwise and no oral communications will be binding upon the City. Any questions must be directed to Desiree Winkler, Deputy Public Works Director, by email at desiree.winkler@cityoffederalway.com, or by letter addressed to same. The questions must be received by the City no later than 5:00 p.m. three business days preceding the bid opening to allow a written reply to reach all prospective Bidders before the submission of their bids. Any interpretation deemed necessary by the City will be in the form of an Addendum to the bid documents and when issued will be sent as promptly as is practical to all parties to whom the bid documents have been issued. All such Addenda shall become part of the bid.

(4) BID PRICE

The bid price shall include everything necessary for the completion of the Contract and the Work including, but not limited to, furnishing all materials, equipment, tools, freight charges, facilities and all management, superintendence, labor and service, except as may be provided otherwise in the Contract Documents. All Washington State sales tax and all other government taxes, assessments and charges shall be included in the various Bid item prices as required by law. The offer shall remain in effect ninety (90) days after the bid opening.

(5) POSTPONEMENT OF BID OPENING

The City reserves the right to postpone the date and time for the opening of bids by Addendum at any time prior to the bid opening date and time announced in these documents.

(6) REJECTION OF BIDS

The City reserves the right to reject any bid for any reason including, but not limited to, the reasons listed in Special Provisions Section 1-02.13. The City further reserves the right to reject any portion of any bid and/or to reject all bids. In consideration for the City's review and evaluation of its bid, the bidder waives and releases any claims against the City arising from any rejection of any or all bids. If, in the opinion of the City, there is reason to believe that collusion exists among bidders, none of the bids of the participants in such collusion will be considered.

(7) RECYCLED PRODUCTS

The Contractor shall use recycled paper for proposals and for any printed or photocopied material created pursuant to a contract with the City whenever practicable and use both sides of paper sheets for reports submitted to the City whenever practicable.

(8) BIDDER'S CHECKLIST

The bidder's attention is especially called to the following forms, which must be executed in full as required. Failure to comply may result in rejection of any bid not so complying.

- Bid Proposal:** The Bid Proposal shall be completed and fully executed, including filling in the total bid amount.
- Bid Bond:** This form is to be executed by the bidder (and the surety company as appropriate, depending upon the option selected by the bidder).
- Subcontractor List:** The Subcontractor List shall be filled in by the bidder.
- Contractor Certification – Wage Law Compliance:** This form shall be filled in and fully executed by the bidder.
- Proposal for Incorporating Recycled Materials:** This form shall be filled in and executed by the bidder.

(9) CONTRACT CHECKLIST

The following documents are to be executed and delivered to the City after the Bid is awarded:

- Public Works Contract:** The successful bidder will fully execute and deliver to the City the Public Works Contract ("Contract") from these Bid Documents.
- Certificate of Insurance:** The successful bidder will provide a Certificate of Insurance evidencing the insurance requirement set forth in the Contract.
- Performance/Payment Bond:** The successful bidder will provide a fully executed Performance/Payment Bond as appropriate.
- Business License:** The successful bidder will provide a copy of a current Business License with the City of Federal Way.

BID PROPOSAL
TRAFFIC CONTROL CENTER (TCC)

PROPOSAL SUBMITTED TO:

City of Federal Way
33325 8th Ave South
Federal Way, Washington 98003-6325

PROPOSAL SUBMITTED BY:

Bidder: _____
Full Legal Name of Firm

Contact: _____
Individual with Legal Authority to sign Bid and Contract

Address: _____
Street Address

City, State Zip

Phone: _____

E-Mail: _____

- Select One of the Following:
- Corporation
 - Partnership.
 - Individual
 - Other

State Contractor's License No.: _____

State Contractor's License Expiration Date: _____ / _____ / _____
Month Day Year

State UBI No.: _____

State Worker's Comp. Account No.: _____

NOTE: All entries shall be written in ink or typed. Unit prices for all items, all extensions, and total amount of bid shall be shown. Enter unit prices in numerical figures only, in dollars and cents to two (2) decimal places (including for whole dollar amounts). All figures must be clearly legible. Bids with illegible figures in the unit price column will be regarded as nonresponsive. Where conflict occurs between the unit price and the total amount specified for any item, the unit price shall prevail, and totals shall be corrected to conform thereto. The Bidder shall complete this entire Bid Form or this bid may be considered non-responsive. The City may correct obvious mathematical errors. The City of Federal Way reserves the right to reject any and all bids, waive any informalities or minor irregularities in the bidding, and determine which bid or bidder meets the criteria set forth in the bid documents.

BID SCHEDULE: TRAFFIC CONTROL CENTER (TCC)						
<i>All unit prices shall NOT include applicable sales tax.</i>						
<i>Sales tax should be applied to the subtotal for this bid schedule.</i>						
Item No.	Spec. Div.	Bid Item Description	Unit	Plan Qty	Unit Price	Amount
1	1-04.4	Minor Change	FA	1	\$5,000	\$5,000
2	8-30	Traffic Control Center – Construction <i>(Not Including Mechanical/Electrical Systems)</i>	LS	1	\$	\$
3	8-30	Traffic Control Center – Mechanical System	LS	1	\$	\$
4	8-30	Traffic Control Center – Electrical System	LS	1	\$	\$
5	8-30	Office Chair Allowance	LS	1	\$2,000	\$2,000
SUBTOTAL						\$
SALES TAX (10.0%)						\$
TOTAL						\$

The documents incorporated by reference, as if fully set forth, are the Advertisement for Bids, the Instructions to Bidders and Checklists, the Contractor's Bid Proposal (including all forms and supplemental information listed on the Bidder's Checklist), the Contract Documents (including Project Plans, Specifications, and all Appendices, Amendments, and Supplemental Reports & Information), the Contract Provisions (including all forms and supplemental information listed on the Contract Checklist), the version of the Washington State Standard Specifications for Road, Bridge, and Municipal Construction identified herein, and any other documents provided to bidders and/or referenced in or referred to by the Contract Documents.

Pursuant to and in compliance with the Advertisement for Bids for the Project, and other documents relating thereto, the undersigned has carefully examined all of the bid and contract documents, considered conditions which may affect the delivery, supply and maintenance for the Project, and hereby proposes to furnish all labor, materials and perform all work as required in strict accordance with the contract documents, for the referenced bid amount, inclusive of Washington State sales tax and all other government taxes, assessments and charges as required by law.

NON-COLLUSION AFFIDAVIT

By signing this proposal, the undersigned acknowledges that the person(s), firm, association, or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this project.

To report rigging activities, call 1-800-424-9071. The U.S. Department of Transportation (USDOT) operates the toll-free hotline Monday through Friday, 8:00 a.m. to 5:00 p.m., Eastern Time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the hotline to report such activities. The hotline is part of USDOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

CONFLICTS OF INTEREST, GRATUITIES, & NON-COMPETITIVE PRACTICES

By signing this proposal, the undersigned agrees as follows:

- (1) That it has no direct or indirect pecuniary or proprietary interest, that it shall not acquire any interest which conflicts in any manner or degree with the work, services, equipment or materials required to be performed and/or provided under this contract and that it shall not employ any person or agent having any such interests. In the event that the Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to the City and take action immediately to eliminate the conflict or to withdraw from this contract, as the City may require; and
- (2) That no person or selling agency except bona fide employees or designated agents or representatives of the Contractor have been employed or retained to solicit or secure this contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and
- (3) That no gratuities in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its agents, employees or representatives, to any official, member or employee of the City or other governmental agency with a view toward securing this contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this contract.

AFFIDAVIT OF ELIGIBILITY

The Contractor certifies that it is properly licensed and registered under the laws of the State of Washington and has not been determined to have been in violation of RCW 50.12.070(1)(b), RCW 51.16.070(1)(b), or RCW 82.32.070(2) within the last two years. The Contractor further certifies that it has not been determined, within the last one year, to have committed any combination of two of the following violations or infractions within a five year period: (1) Violated RCW 51.48.020(1) or 51.48.103; or (2) Committed an infraction or violation under Chapter 18.27 RCW.

CERTIFICATION OF LAWFUL EMPLOYMENT

The Contractor hereby certifies that it has complied with all provisions of the Immigration and Nationality Act now or as herein after amended, 8 U.S.C. 1101 et. Seq., and that all employees, including subcontractor employees, are lawfully permitted to perform work in the United States as provided in this agreement with the City of Federal Way.

Receipt of the following Addendums is hereby acknowledged:

Addendum No. ____	Date Issued: _____
Addendum No. ____	Date Issued: _____
Addendum No. ____	Date Issued: _____

The undersigned individual represents and warrants that he or she is dully authorized to execute the bid and all bid documents on behalf of any partnership, joint venture or corporation.

By: _____
Signature

Printed Name

Title

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

Signature of Notary

Printed name of Notary
Notary Public in and for the State of Washington
My commission expires: _____

BID BOND
TRAFFIC CONTROL CENTER (TCC)

OPTION 1: BID BOND DEPOSIT

Attached is a deposit in the form of a certified check, cashier's check, or cash in the amount of \$ _____, which amount is not less than five percent (5%) of the total bid.

Principal – Signature of Authorized Official *Date*

Title

—OR—

OPTION 2: BID BOND

KNOW ALL PERSONS BY THESE PRESENTS that we, _____, as Principal, and _____, as Surety, are held and firmly bound unto the City of Federal Way, as Obligee, in the sum of five (5) percent of the total amount of the bid proposal for the payment of which the Principal and the Surety bond themselves, their heirs and executors, administrators, successors and assigns, jointly and severally, by these presents.

The condition of this obligation is such that if the Obligee shall make any award to the Principal for the above-mentioned Project according to the terms of the proposal or bid made by the Principal therefore, and the Principal shall duly make and enter into a contract with the Obligee in accordance with the terms of said proposal or bid and award and shall give bond for the faithful performance thereof, with Surety or Sureties approved by the Obligee; or if the Principal shall in case of failure so to do, pay and forfeit to the Obligee the penal amount of the deposit specified in the call for bids, then this obligation shall be null and void; otherwise, it shall be, and remain in full force and effect, and the Surety shall forthwith pay and forfeit to the Obligee as penalty and liquidated damages, the amount of this bond.

SIGNED, SEALED AND DATED THIS ____ DAY OF _____, 20____.

Principal – Signature of Authorized Official

Surety – Attorney in Fact
(Attach Power of Attorney)

Title

Name and Address of Local Office/Agent of Surety Company is:

SUBCONTRACTOR LIST

Local Agency Name CITY OF FEDERAL WAY
Local Agency Address 33325 8TH AVE S FEDERAL WAY, WA 98003

Local Agency Subcontractor List

Prepared in compliance with RCW 39.30.060 as amended

To Be Submitted with the Bid Proposal

Project Name _____

Failure to list subcontractors with whom the bidder, if awarded the contract, will directly subcontract for performance of the work of heating, ventilation and air conditioning, plumbing, as described in Chapter 18.106 RCW, and electrical, as described in Chapter 19.28 RCW or naming more than one subcontractor to perform the same work will result in your bid being non-responsive and therefore void.

Subcontractor(s) with whom the bidder will directly subcontract that are proposed to perform the work of heating, ventilation and air conditioning, plumbing, as described in Chapter 18.106 RCW, and electrical as described in Chapter 19.28 RCW must be listed below. The work to be performed is to be listed below the subcontractor(s) name.

To the extent the Project includes one or more categories of work referenced in RCW 39.30.060, and no subcontractor is listed below to perform such work, the bidder certifies that the work will either (i) be performed by the bidder itself, or (ii) be performed by a lower tier subcontractor who will not contract directly with the bidder.

Subcontractor Name _____
Work to be Performed _____

Subcontractor Name _____
Work to be Performed _____

Subcontractor Name _____
Work to be Performed _____

Subcontractor Name _____
Work to be Performed _____

Subcontractor Name _____
Work to be Performed _____

* Bidder's are notified that is the opinion of the enforcement agency that PVC or metal conduit, junction boxes, etc, are considered electrical equipment and therefore considered part of electrical work, even if the installation is for future use and no wiring or electrical current is connected during the project.

SR

DOT Form 271-015A EF
Revised 08/2012

CONTRACTOR WAGE LAW COMPLIANCE CERTIFICATION

FAILURE TO RETURN THIS CERTIFICATION AS PART OF THE BID PROPOSAL PACKAGE WILL MAKE THIS BID NONRESPONSIVE AND INELIGIBLE FOR AWARD.

I hereby certify, under penalty of perjury under the laws of the State of Washington, on behalf of the firm identified below that, to the best of my knowledge and belief, this firm has **NOT** been determined by a final and binding citation and notice of assessment issued by the Washington State 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 Chapters 49.46, 49.48, and 49.52 RCW within three (3) years prior to the date of the Request for Bids.

Bidder Name: _____
Print Full Legal Name of Firm

By: _____
Signature of Authorized Person _____
Print Name of Person Making Certifications for Firm

Title: _____
Title of Person Signing Certificate Place: _____
Print City and State Where Signed

Date: _____

PROPOSAL FOR INCORPORATING RECYCLED MATERIALS



APWA-WA Division 1 Committee

rev. 1/8/2016

Proposal for Incorporating Recycled Materials into the Project

In compliance with a new law that went into effect January 1, 2016 (SHB1695), the Bidder shall propose below, the total percent of construction aggregate and concrete materials to be incorporated into the Project that are recycled materials. Calculated percentages must be within the amounts allowed in Section 9-03.21(1)E, Table on Maximum Allowable Percent (By Weight) of Recycled Material, of the Standard Specifications.

Proposed total percentage: _____ percent.

Note: Use of recycled materials is highly encouraged within the limits shown above, but does not constitute a Bidder Preference, and will not affect the determination of award, unless two or more lowest responsive Bid totals are exactly equal, in which case proposed recycling percentages will be used as a tie-breaker, per the APWA GSP in Section 1-03.1 of the Special Provisions. Regardless, the Bidder's stated proposed percentages will become a goal the Contractor should do its best to accomplish. Bidders will be required to report on recycled materials actually incorporated into the Project, in accordance with the APWA GSP in Section 1-06.6 of the Special Provisions.

Bidder: _____

Signature of Authorized Official: _____

Date: _____

PUBLIC WORKS CONTRACT

THIS PUBLIC WORKS CONTRACT ("Contract") is dated effective this ____ day of _____, 20__ and is made by and between the City of Federal Way, a Washington municipal corporation ("City or Owner"), and _____, a _____ ("Contractor"), for the project known as _____ (the "Project").

A. The City desires to retain an independent contractor to furnish all labor and materials necessary to perform work necessary to complete the Project; and

B. The Contractor has the requisite skill and experience to perform such work.

NOW, THEREFORE, the parties ("Parties") agree to the following terms and conditions:

1. SERVICES BY CONTRACTOR

Contractor shall perform all Work and furnish all tools, materials, supplies, equipment, labor and other items incidental thereto necessary for the construction and completion of the Project. Contractor shall perform the Work in a manner consistent with accepted practices for other properly licensed contractors and in accordance with and as described in the Contract Documents, which Work shall be completed to the City's satisfaction, within the time period prescribed by the City and pursuant to the direction of the Mayor or his or her designee.

2. TERM

2.1 This Contract shall commence on the effective date of this Contract and continue until the Project is formally accepted as complete by the City Council, Notice of Project Completion is filed with State agencies, and all bonds for the Project are released by the City.

2.2 The Contractor must complete the Work in accordance with the number of Working Days for the Project as identified in the Contract Documents. With regard to obtaining Substantial Completion and the Completion Date by the Contractor, time is of the essence. In the event the Work is not substantially completed within the time specified in the Contract Documents, Contractor agrees to pay to the City liquidated damages in the amount set forth in the Contract Documents. The parties acknowledge that delays inconvenience the public and cost taxpayers undue sums of money, adding time needed for administration, inspection, and supervision of the Project and diverting City resources from other projects and obligations. It is impractical and difficult to calculate the actual costs and impacts of such delays. The parties therefore agree that the formula for calculating liquidated damages as set forth in the Contract Documents is an appropriate formula and will result in a reasonable approximation of the City's damages in the event of delay.

2.3 If the Contractor is unreasonably delayed by others, notification shall be made in writing to the Engineer in accordance with the Contract Documents. Any request for a time extension or additional compensation (including expectancy or consequential damages) allegedly resulting from such delay shall be made in accordance with the procedures of the Contract Documents. Failure to follow the notice procedures in the Contract Documents is a full and complete waiver of Contractor's right to additional time, money, damages, or other relief (including expectancy or consequential damages) as a result of the event or condition giving rise to such request.

3. COMPENSATION

3.1 In consideration of the Contractor performing the Work, the City agrees to pay the Contractor an amount not to exceed _____ and ___/100 Dollars (\$ _____), which amount shall constitute full and complete payment by the City ("Total Compensation"). The Contractor shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Contract.

3.2 The City shall pay the Contractor for Work performed under this Contract as detailed in the Bid Proposal, which is incorporated herein and made a part hereof by this reference, and as detailed in

the Contract Documents. The City shall have the right to withhold payment to the Contractor for any of the Work not completed in a satisfactory manner, in the City's sole and absolute discretion, which shall be withheld until such time as Contractor modifies or repairs the Work so that the Work is acceptable to the City. Payment to the Contractor for partial estimates, final estimates, and retained percentages shall be subject to controlling laws.

3.3 In addition to the requirements set forth in the Contract Documents, the Contractor shall maintain Project cost records by cost codes and shall contemporaneously segregate and separately record, at the time incurred, all costs (1) directly associated with each work activity, (2) directly or indirectly resulting from any event, occurrence, condition, or direction for which Contractor seeks an adjustment in Contract price Contract time, or related to any other Claim or protest. Any work performed for which Contractor intends to seek an adjustment in Contract Price or Contract Time, or related to any other Claim or protest, shall be recorded on the same day the work is performed and kept separate so as to distinguish it from Contract Work.

4. INDEPENDENT CONTRACTOR

4.1 It is the intention and understanding of the Parties that the Contractor shall be an independent contractor and that the City shall be neither liable nor obligated to pay Contractor sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax which may arise as an incident of employment. The Contractor shall not conduct itself as nor claim to be an officer or employee of the City. The Contractor shall pay all income and other taxes due. Industrial or any other insurance that is purchased for the benefit of the City, regardless of whether such may provide a secondary or incidental benefit to the Contractor, shall not be deemed to convert this Agreement to an employment contract. It is recognized that Contractor may or will be performing professional services during the Term for other parties; provided, however, that such performance of other services shall not conflict with or interfere with Contractor's ability to perform the Services. Contractor agrees to resolve any such conflicts of interest in favor of the City. Nothing contained in this Contract shall create a contractual or direct relationship with or a cause of action in favor of a Subcontractor or third party against the City, or by the Contractor against the Engineer, or against any of their agents, employees, engineers, or consultants.

4.2 If the Contractor is a sole proprietorship or if this is a contract with an individual, the contractor agrees to notify the City and complete any required form if the Contractor retired under a State of Washington retirement system and agrees to indemnify any losses the City may sustain through the Contractor's failure to do so.

5. INDEMNIFICATION

5.1 Contractor Indemnification.

5.1.1 The Contractor shall indemnify, defend, and hold the City, its elected officials, officers, employees, agents, consultants, and volunteers (collectively "the Indemnified Parties") harmless from any costs or losses, and pay and damages or judgments, related to any claim brought by any person employed in any capacity by the Contractor or subcontractor or supplier (of any tier) performing the Work, with respect to the payment of wages, salaries, or other compensation or benefits including but not limited to benefits such as medical, health, retirement, vacation, sick leave, etc.

5.1.2. To the fullest extent permitted by law, the Contractor shall defend, release, indemnify, and hold harmless the City and the Indemnified Parties for, from, and against any and all claims, demands, losses, costs, damages, suits, actions, expenses, fines, penalties, response costs, and liabilities (including costs and all attorney and expert fees and internal personnel costs of investigation) of whatsoever kind or nature to the extent arising from, resulting from, connected with, or incident to the Contractor's performance or failure to perform this Contract or the Work or its breach of this Contract; provided, however, that if the provisions of RCW 4.24.155 apply to the Work and any injuries to persons or property arising out of the performance of this Contract are caused by or result from the concurrent negligence of the Contractor or its subcontractors, agents, employees, or anyone for whom they are legally liable, and an Indemnified Party, the indemnification and defense obligations under this Section

5.1.2 apply only to the extent of the negligence of the Contractor, its subcontractors, agents, employees, and anyone for whom they are legally liable.

5.1.3 Contractor specifically assumes potential liability for actions brought by the Contractor's own employees or former employees against any Indemnified Party, and for that purpose Contractor waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. Contractor's indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefits acts or programs. Provided, however, the Contractor's waiver of immunity by the provisions of this paragraph extends only to claims against the Contractor by any Indemnified party, and does not include, or extend to, any claims by the Contractor's employee directly against the Contractor. The Contractor recognizes that this waiver was specifically entered into.

5.2 Contractor Release. Any deviation, alteration, variation, addition, or omission in the Work by Contractor from the Contract Documents shall preclude Contractor from bringing any Claim or request for additional time or compensation on the basis of an alleged defect or error in the Contract Documents related to or arising, in any way, from that deviation, alteration, variation, addition, or omission. The Contractor further warrants that any alteration, variation, deletion, or omission fully complies with or exceeds all requirements of the Contract Documents and assumes all risk thereof.

5.3 Survival. The provisions of this Section shall (1) survive the expiration or termination of this Contract with respect to any event occurring prior to such expiration or termination, final payment hereunder, and any applicable statute of repose with respect to claims, fines, costs or damages brought or made against any Indemnified Party; (2) shall not be limited by RCW 4.16326(g); and (3) are in addition to any other rights or remedies which the City and/or any of the Indemnified Parties may have by law or under this Contract.

5.4 Offset. In the event of any claim or demand made against any Indemnified Party hereunder, the City may, in its sole discretion, reserve, retain or apply any monies due to the Contractor under the Contract or any other agreement or contract with the City for the purpose of resolving such claims; provided, however, that the City may, in the City's sole discretion, release such funds if the Contractor provides the City with adequate assurance of the protection of the City's and the other Indemnified Parties interests.

5.5 The Contractor shall ensure that each Subcontract includes a provision requiring each Subcontractor to indemnify and defend the City and the Indemnified Parties in the same manner, to the same extent, and for the same duration as Contractor agrees to indemnify and defend the City and the Indemnified Parties in this Section 5.

6. OWNERSHIP OF DOCUMENTS

All originals and copies of work product, including plans, sketches, layouts, designs, design specifications, records, files, computer disks, magnetic media, all finished or unfinished documents or material which may be produced or modified by Contractor while performing the Work, whether or not required to be furnished to the City, shall become the property of the City, shall be delivered to the City at its request, and may be used by the City without restriction.

7. PATENTS, COPYRIGHTS, AND RIGHTS IN DATA

7.1 Any patentable result or material suitable for copyright arising out of this Contract shall be owned by and made available to the City for public use, unless the City shall, in a specific case where it is legally permissible, determine that it is in the public interest that it not be so owned or available.

7.2 The Contractor agrees that the ownership of any plans, drawings, designs, specifications, computer programs, technical reports, operating manuals, calculations, notes and other work submitted or which is specified to be delivered under this Contract, whether or not complete (referred to in this subsection as "Subject Data"), is hereby irrevocably transferred and assigned to the City and shall be vested in the City or such other local, state or federal agency, if any, as may be provided by separate

contract with the City. The Contractor shall execute and deliver such instruments and take such other action(s) as may be requested by the City to perfect or protect the City's rights to such Subject Data and work product, and to perfect the assignments and transfers contemplated in Sections 6 and 7.

7.3 All such Subject Data furnished by the Contractor pursuant to this Contract, other than documents exclusively for internal use by the City, shall carry such notations on the front cover or a title page (or in such case of maps, in the same block) as may be requested by the City. The Contractor shall also place their endorsement on all Subject Data furnished by them. All such identification details shall be subject to approval by the City prior to printing.

7.4 The Contractor shall ensure that substantially the foregoing paragraphs in Sections 6 and 7 are included in each subcontract for the work on the Project.

8. GENERAL PROVISIONS

8.1 Entire Contract. The Contract Documents contain all of the agreements of the Parties with respect to any matter covered or mentioned in this Contract and no prior agreements or understandings pertaining to any such matters shall be effective for any purpose. In entering into this Contract, neither party has relied upon any statement, estimate, forecast, projection, representation, warranty, action or agreement of the other party except for those expressly contained in the Contract Documents.

8.2 Documents. The documents incorporated by reference, as if fully set forth in this Contract, are the Advertisement for Bids, the Instructions to Bidders and Checklists, the Contractor's Bid Proposal (including all forms and supplemental information listed on the Bidders Checklist), the Contract Documents (including Project Plans, Specifications, and all Appendices, Amendments, and Supplemental Reports & Information), the Contract Provisions (including all forms and supplemental information listed on the Contract Checklist), the version of the Washington State Standard Specifications for Road, Bridge, and Municipal Construction identified herein, and any other documents provided to bidders and/or referenced in or referred to by the Contract Documents.

8.3 Modification. No provisions of this Contract, including this provision, may be amended or added to except by agreement in writing signed by the Parties or their respective successors in interest in accordance with the Contract Documents.

8.4 Change Orders. In addition to its rights under the Contract Documents, the City may unilaterally issue a Change Order at any time making changes within the general scope of the Contract, without invalidating the Contract and without providing notice to sureties. The City's issuance of a unilateral Change Order shall not be construed as a waiver of any rights afforded the City, including its right to reject a prior protest or request for change or Claim due to untimeliness or the Contractor's failure to fully comply with the requirements of the Contract Documents, or to void the unilateral Change Order due to unilateral mistake, misrepresentation, or fraud.

8.5 Total Cost Method / Claims. In no event shall a Total Cost Method or a modified Total Cost Method be used by the Contractor to calculate any adjustments to the Contract price. For the purpose of this provision, any cost method, or variety of cost methods, using the difference between the actual cost of the Work and the Bid or Contract price of the Work to calculate any additional compensation or money owed to the Contractor shall be considered a Total Cost Method. In addition, the City shall not be responsible for, and the Contractor shall not be entitled to, any compensation for unallowable costs. Unallowable costs include, but are not limited to: (i) interest or attorneys' fees, except as mandated by statute; (ii) Claim preparation or filing costs; (iii) the costs of preparing notices or protests; (iv) lost profits, lost income, or lost earnings; (v) costs for idle equipment when such equipment is not at the Site, has not been employed in the Work, or is not scheduled to be used at the Site; (vi) claims consulting costs; (vii) expert fees and costs; (viii) loss of other business; and/or (ix) any other special, consequential, expectancy, incidental, or indirect damages incurred by the Contractor, Subcontractors, or suppliers.

8.6 Warranties and Guarantees. In addition to the requirements of the Contract Documents, the Contractor warrants that all portions of the Work that will be covered by a manufacturer's or supplier's

guarantee or warranty shall be performed in such a manner so as to preserve all rights under such guarantees or warranties. If the City attempts to enforce a claim based upon a manufacturer's or supplier's guarantee or warranty and such manufacturer or supplier refuses to honor such guarantee or warranty based, in whole or in part, on a claim of defective installation by the Contractor or a Subcontractor, the Contractor shall be responsible for any resulting loss or damage, and repairs, incurred by the City as a result of the manufacturer's or supplier's refusal to honor such guarantee or warranty. This obligation survives termination of this Contract.

8.7 Full Force and Effect. Any provision of this Contract, which is declared invalid, void or illegal, shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

8.8 Assignment. The Contractor shall not transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the City. In the event the City consents to any such assignment or transfer, such consent shall in no way release the Contractor from any of its obligations or liabilities under this Contract.

8.9 Successors In Interest. Subject to the preceding Subsection, this Contract shall be binding upon and inure to the benefit of the Parties' successors in interest, heirs and assigns.

8.10 Time Limitation and Venue. For the convenience of the parties to the Contract it is mutually agreed by the parties that any claims, causes of action, or disputes which the Contractor has against the City arising from the Contract shall be brought within the following time period: (i) 180 calendar days from the date of Substantial Completion for those claims, causes of action, or disputes arising prior to the date of Substantial Completion, and (ii) 180 calendar days from the date of Final Acceptance of the Contract by the City for those claims, causes of action, or dispute arising after the date of Substantial Completion. It is further agreed that the venue for any claim, cause of action, or dispute related to this Contract shall be King County, Washington, which shall have exclusive jurisdiction over any such case, controversy, or dispute. The parties understand and agree that the Contractor's failure to bring suit within the time period provided, shall be a complete bar to any such claims or causes of action. It is further mutually agreed by the parties that when any claims, causes of action, or disputes which the Contractor asserts against the City arising from the Contract are filed with the City or initiated in court, the Contractor shall permit the City to have timely access to any records deemed necessary by the City to assist in evaluating the claims, action, or dispute.

8.11 No Waiver. Failure of the City to declare any breach or default immediately upon occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

8.12 Sole Authority/Discretion/Judgment. Where the Contract Documents provide the City or its Engineer with "sole" authority, discretion, or judgment, such authority, discretion, or judgment shall be considered unconditional and absolute.

8.13 Governing Law. This Contract shall be made in and shall be governed by and interpreted in accordance with the laws of the State of Washington.

8.14 Authority. Each individual executing this Contract on behalf of the City and Contractor represents and warrants that such individuals are duly authorized to execute and deliver this Contract on behalf of the Contractor or City.

8.15 Engineer. The Engineer is the City's representative who directly supervises the engineering and administration of a construction Contract. The Engineer's authorities, duties, and responsibilities are limited to those specifically identified in the Contract Documents. Designation of an individual or entity as the Engineer for the Project is solely to identify the representative of the City as the entity to act as the Engineer as described in the Contract Documents. Using the term "engineer" does not imply that such

entity or person is a licensed professional engineer or an engineering company and does not import any additional obligations upon the actions of the Engineer that may govern licensed professional engineers when performing engineering services.

The Engineer for this Project is designated as: Transpo Group.

8.16 Notices. Any notices required to be given to Contractor or to the Engineer shall be delivered to the Parties at the addresses set forth below. Any notices may be delivered personally to the addressee of the notice or may be deposited in the United States mail, postage prepaid, to the address set forth herein. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

CONTRACTOR: Company: _____
Attn: _____
Street Address: _____
City, State, Zip: _____

ENGINEER: CM Company OR City of Federal Way
Attn: Project Engineer Attn: Project Engineer
Street Address 33325 8th Ave S
City, State, Zip Federal Way, WA 98003

8.17 Captions. The respective captions of the Sections of this Contract are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect in any respect any of the provisions of this Contract.

8.18 Performance. Time is of the essence of this Contract and each and all of its provisions in which performance is a factor. Adherence to completion dates is essential to the Contractor's performance of this Contract.

8.19 Compliance with Ethics Code. If a violation of the City's Ethics Resolution No. 91-54, as amended, occurs as a result of the formation and/or performance of this Contract, this Contract may be rendered null and void, at the City's option.

9. PERFORMANCE/PAYMENT BOND

Pursuant to RCW 39.08.010, the Contractor's payment and performance bonds must be conditioned upon: (i) faithful performance of all of the provisions of the Contract, including warranty obligations; (ii) the payment of all laborers, mechanics, Subcontractors, and Suppliers, and all persons who supply such persons with provisions or supplies in carrying out the Work; and (iii) payment of any taxes, liabilities, increases, or penalties incurred on the Project under Titles 50, 51, and 82 RCW which may be due on (a) projects referred to in RCW 60.28.011(1)(b), and (b) projects for which the bond is conditioned on the payment of such taxes, liabilities, increases, or penalties. Contractor's obligations under this Contract shall not be limited to the dollar amount of the bond.

DATED the day and year set forth above.

CITY OF FEDERAL WAY

CONTRACTOR

Jim Ferrell, Mayor
33325 8th Avenue South
Federal Way, WA 98003-6325

Signature of Authorized Individual

Printed Name of Authorized Individual

ATTEST:

**CITY OF FEDERAL WAY
JUNE 2019**

RFB-18

**TRAFFIC CONTROL CENTER (TCC)
PROJECT #202 / RFB #19-005**

waiver of any and all claims by the Contractor arising out of, or relating in any way to, the Work identified, to be performed, or deleted pursuant to Change Order except as specifically described in this Change Order.

CONTRACTOR'S SIGNATURE

DATE

PUBLIC WORKS DIRECTOR

DATE

*Contract Change Order
provided for Contractor's
reference. Change orders
executed during the project
will use this form.*

CERTIFICATE OF INSURANCE

*Contractor's Certificate of
Insurance to be inserted
here during Contract
Execution*

LOCAL OFFICE/AGENT OF SURETY:

Name

Street Address

City, State, Zip

Telephone

BOND NO.: _____

APPROVED AS TO FORM:

J. Ryan Call, City Attorney