

Project title: Authorize Release of Invitation for Bid #2021-008 for 2021 Biosolids Haul and Land Application**Council Bill #****Agenda dates requested:**

February 17, 2021

Briefing

Proposed action

Consent

Action

Ordinance

Public hearing

Yes X No **Budget amendment:**Yes X No **PowerPoint presentation:**Yes X No **Attachments:**

Proposal

Department(s) involved:

Procurement & Public Works

Contact person:

Theresa Bauccio-Teschlog

Phone number:

425-257-8901

Email:

tbauccio@everettwa.gov

Initialed by:*sh*

Department head

Administration

Council President

Consideration: Invitation to Bid 2021-008 for 2021 Biosolids Loading, Hauling, and Land Application**Project:** 2021 Biosolids Haul and Land Application**Partner/Supplier:** TBD**Location:** Everett Water Pollution Control Facility**Preceding action:** Authorize 2021 Biosolids Dredge and Dewater Project**Fund:** Utilities, 401**Fiscal summary statement:**

The biosolids project will be paid from Fund 401-5-200-112-646-480. The job cost number for this project will be UT3752-10-480.

Project Description	Budget
Loading, Hauling, Land Application	\$910,000
Dredging and Dewatering	1,040,000
Total	\$1,950,000

Project summary statement:

The City's wastewater treatment plant produces approximately 2,000 dry tons of biosolids in Aeration Cell #2 on a two-year cycle. The biosolids are used for agricultural land application. This solicitation will result in a contract award for the land application of biosolids at facilities permitted to receive biosolids as a soil amendment for agronomic use.

Recommendation (exact action requested of Council):

Authorize Release of Invitation for Bid #2021-008 for 2021 Biosolids Haul and Land Application



PURCHASING

Invitation for Bid #2021-008

Point of Contact:
 Bert Cueva
 Buyer
 (425) 257-8903
bids@everettwa.gov

BIOSOLIDS LOADING, HAULING & LAND APPLICATION

TIME LINE - The following represents the schedule for this solicitation.

<u>Event</u>	<u>Date</u>
Issue Date.....	February 18, 2021
Deadline for Final Questions	March 11, 2021
Bid Due Date.....	March 23, 2021, 2:00 p.m. Pacific Time
Award	April 2021
Estimated Contract Start Date	May 2021
Contract Term	Project completion. Project complete prior to July 30, 2021, unless a later completion date is approved by City Project Manager

Submit Sealed Bids to:
 City of Everett – Purchasing Office
 3200 Cedar Street, Door 5
 Everett, WA 98201

Sealed bids will be received at the Purchasing Office Monday – Friday from 8:00 a.m. – 3:00 p.m. and until March 23, 2021, at 2:00 p.m. Clearly label the outside of the sealed envelope containing the original bid and one complete copy with the Bid Name, Bid # and contact information listed above. Only bids that arrive in the City Purchasing office by the deadline will be considered.

At the appointed time, all bids will be opened and read aloud publicly via live stream only. The link to watch the bid opening will be accessible from <https://www.everettwa.gov/purchasing>. If you have any questions about logging into the live streaming bid opening, call (425) 257-8904.

Information & Addenda: All Information including Addenda regarding this solicitation can be found at:
<https://everettwa.gov/purchasing>

Suppliers are responsible for checking the City of Everett website for the issuance of any addenda prior to submitting a bid.

Questions: All questions must be requested through Public Purchase utilizing the above link or e-mailed to the procurement professional listed above.

Unauthorized contact regarding this Invitation to Bid with any other City of Everett employee or contractor may result in disqualification. Any oral communications will be considered unofficial and non-binding on the City of Everett. Suppliers should rely only on written statements issued by the individual named listed above.

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SECTION 1 - INSTRUCTIONS

1.1 BID SUBMITTAL

The City Purchasing Office must receive the Supplier's bid, in its entirety by 2:00 p.m. Pacific Time. Bids arriving after the deadline will be returned unopened to their senders.

All bids must be submitted on the forms provided in this document. To receive consideration for award, the bid shall be completed and signed by an authorized representative of the Supplier.

Only firm bids will be accepted, and the City reserves the right to reject any or all bids or waive any irregularities and informalities in the bids submitted and accepted by the City. No Supplier may withdraw their bid after the hour set for the opening unless the award is delayed for a period exceeding ninety (90) days. The City further reserves the right to make awards to the lowest and most responsive Bidder as deemed in the best interests of the City.

1.2 BID OPENING

At the appointed time, all bids will be opened and read aloud publicly via live stream only. The link to watch the bid opening will be accessible from <https://www.everettwa.gov/purchasing>. If you have any questions about logging into the live streaming bid opening, call (425) 257-8904

1.3 OFFER PERIOD

All bids submitted shall remain open for ninety (90) days from the receipt date. The City of Everett reserves the right to extend this period.

1.4 REQUEST FOR DUE DATE EXTENSION

Suppliers may request an extension of the Bid Due Date. Supplier shall supply any justification and additional information that will facilitate an evaluation and decision by the City of Everett. Any approved extension will be issued in an addendum.

1.5 WITHDRAWAL OF BIDS

Suppliers may withdraw a bid which has been submitted at any time up to the due date and time. To accomplish this, a written request signed by an authorized representative of the Supplier must be submitted to the procurement professional named on the Invitation to Bid cover sheet.

1.6 PROCEDURE WHEN ONLY ONE BID IS RECEIVED

If the City of Everett receives a single responsive, responsible bid, the City shall have the right to conduct a price or cost analysis on such bid. The Supplier shall promptly provide all cost or pricing data, documentation and explanation requested by the City to assist in such analysis. By conducting such analysis, the City shall not be obligated to accept the single bid; the City reserves the right to reject such bid or any portion thereof.

1.7 MULTIPLE BIDS

Suppliers interested in submitting more than one bid may do so, so long as each bid stands alone and independently complies with the instructions, conditions and specifications of this Invitation to Bid.

1.8 EVALUATION AND AWARD

The City of Everett will award the Bid to the responsive and responsible Supplier(s) with the lowest offer that best meets the needs of the City or reject any and all Bids.

- a. Responsive Bidder- A business entity or individual who has submitted a bid or proposal that fully conforms in all material respects to the Invitation for Bids (IFB)/Request for Proposals (RFP) and all of its requirements, including all form and substance.
- b. Responsible Bidder - A business entity or individual who has the financial and technical capacity to perform the requirements of the solicitation and subsequent contract.

1.9 BIDDING ERRORS

The City of Everett will not be liable for any errors in supplier quotations. Suppliers will not be allowed to alter bids after the deadline for bid submission.

The City of Everett reserves the right to make corrections or amendments due to errors identified in bids by the City of Everett or the Supplier. This type of correction or amendment will only be allowed for such errors as typing, transposition or any other obvious error. Suppliers are liable for all errors or omissions contained in their bids.

After receiving bids, the City of Everett will review and check each bid for correctness of extensions of the prices per unit and the total price. If a discrepancy exists between the price per unit and the extended amount of any quoted item, the price per unit will control. The total of extensions, corrected where necessary, will be used by the City of Everett.

When, after the opening of the bids a supplier claims an error, and requests to be relieved of award, they will be required to promptly present certified work sheets. The Procurement Professional will review the work sheets and if the Procurement Professional is convinced, by clear and convincing evidence, that an honest, mathematically excusable error or critical omission of costs has been made, the supplier may be relieved of his bid.

1.10 CANCELLATION

The City, at its sole discretion may choose to reject any or all bids, in whole or in part.

1.11 EXCLUDED PARTIES

All Suppliers must certify that they are not on the Comptroller General's list of ineligible contractors nor the list of parties excluded from Federal procurement or non-procurement programs. <https://www.sam.gov>

1.12 BUSINESS LICENSE

The successful Supplier will be required to possess or be able to obtain a City of Everett Business License and pay City of Everett B & O Tax, when applicable. B & O Tax questions may be directed to Everett City Clerk, (425) 257-8610.

1.13 BID PROTEST PROCEDURES

Chapter 3.46 of the Everett Municipal Code (EMC) governs all protests. Protest Procedures are available for review in the Everett Municipal Code 3.46 which can be found at: <http://www.codepublishing.com/WA/Everett/>

The City reserves the right to require strict compliance with all requirements of Chapter 3.46 EMC.

1.14 NON-ENDORSEMENT

As a result of the selection of a Supplier to provide products and/or services to the City of Everett, the City of Everett is neither endorsing nor suggesting that the supplier's product is the best or only solution. The supplier agrees to make no reference to the City of Everett in any literature, promotional material, brochures, sales presentation or the like without the express written consent of the City of Everett.

1.15 PROPRIETARY MATERIAL SUBMITTED/PUBLIC DISCLOSURE

Any information contained with the bid that is proprietary must be clearly designated. Marking the entire bid as proprietary will be neither accepted nor honored. If a request is made to view a supplier's bid, the City of Everett will comply according to the Open Public Records Act, Chapter 42.56 RCW. If any information is marked as proprietary in the bid, such information will not be made available until the affected supplier has been given an opportunity to seek a court injunction against the requested disclosure.

1.16 RESPONSE PROPERTY OF THE CITY OF EVERETT

All materials submitted in response to this request become the property of the City of Everett. Selection or rejection of a response does not affect this right.

1.17 NO OBLIGATION TO BUY

The City of Everett reserves the right to refrain from contracting with any supplier. The release of this Invitation to Bid does not compel the City of Everett to purchase. The City of Everett reserves the right to reject any and all Bids.

1.18 COST OF PREPARING BIDS

The City of Everett is not liable for any costs incurred by suppliers in the preparation and presentation of proposals and demonstrations submitted in response to this Invitation for Bid.

1.19 COOPERATIVE PURCHASING

Suppliers: RCW 39.34 allows cooperative purchasing between public agencies also called political subdivisions. Public agencies which have an Intergovernmental Cooperative Purchasing Agreement with the City of Everett may purchase from City of Everett contracts, provided that the supplier has agreed to such participation. Each supplier must indicate on the quote submittal form if they will not honor other public agency orders in accordance with contract terms and conditions in addition to orders from the City of Everett. The City of Everett does not accept any responsibility for purchase orders issued by other public agencies.

Cooperating Political Subdivisions: Public agencies desiring to use Everett's contracts must have executed an Intergovernmental Cooperative Purchasing Agreement with the City of Everett, as required by RCW 39.34. Only those public agencies who have complied with these requirements are eligible to use this contract. The public agency accepts responsibility for compliance with any additional or varying laws and regulations governing purchase by or on behalf of the public agency in question. A purchase by a public agency must be affected by a purchase order from the public agency, directed to the supplier or other party contracting to furnish goods or services to the City of Everett.

The City of Everett accepts no responsibility for the performance of any purchasing contract by the supplier, and the City of Everett accepts no responsibility for payment of the purchase price for any public agency.

SECTION 2 - SPECIFICATIONS

2.1 INTENT

The City of Everett seeks a supplier to provide the hauling and land application of biosolids from the City's Water Pollution Control Facility (WPCF) to approved Washington State Department of Ecology (DOE) land application sites.

2.2 BACKGROUND

Biosolids are the semi solid products from treating domestic wastewater. Biosolids provide agricultural nutrients and improve the tilth of the soil. Everett typically dredges the WPCF Aeration Cell #2 every other year and stabilizes and dewater biosolids to produce a suitable product for agronomical land application. The City estimates there to be 7,000 to 8,000 wet tons of biosolids available for loading, hauling and land application.

Everett's biosolids meet or are below regulatory limits for heavy metals (WAC Chapter 173-308, Table 3), and is a consistent product with low odor. See Appendix A for the most recent biosolids analytical data for metals and nutrients. In the past, the City's biosolids have been designated by Ecology as Class B material and have been previously used for silviculture, land reclamation, compost, and on agricultural land as a soil amendment.

2.3 SCOPE OF WORK

1. Supplier will load, haul, and land apply biosolids commencing around May 2021. Official start date will be coordinated between City project manager and awarded supplier.

Completion of the project must occur before July 30, 2021, unless a later date is approved by the City project manager.

- A. Biosolids must be hauled and applied to a Washington State Department of Ecology approved land application site, fully permitted by state and local requirements to accept Class B biosolids.
 - B. Application must be in according with Washington State Department of Ecology (Ecology) Site Specific Land application plan or Beneficial Use Facility Plan (BUF), and any conditions required by the local health district.
 - C. Management and application of Biosolids must be managed at agronomic rates in accordance with following Requirements;
 - i. WAC 173-308 Biosolids Management.
 - ii. Washington Ecology Biosolids Management Guidelines
 - iii. Required Department of Ecology approval and permits including coverage under the General Permit for Biosolids and a DOE approved General Land Application Plan (GLAP) or Site-Specific Land Application Plan (SSLAP).
 - iv. Applicable Federal, State, local laws; including complying with 40 CFR 503 and with local county codes.
 - D. Supplier responsible to provide necessary equipment, materials and personnel.
 - i. Supplier will need to provide loader for biosolids at WFCF.
 - b. There are no restrictions for loader size at WPCF.
2. Biosolids are considered Class B – non-exceptional quality biosolids per WAC 173-308.

- A. Bulk density of biosolids are approximately 1500lbs per cubic yard.
 - B. Total solids are approximately 30%. Free liquids not usually present.
 - C. Latest sampling results of nutrient and metal data provided as supplemental attachment to this Invitation to Bid in [Appendix A](#).
3. Land application must be consistent with the SSLAP and agronomic rates and compliance per WAC 173-308.

2.4 TRANSPORTATION

1. Equipment:
 - A. There is no truck size or loading capacity restrictions for access to WPCF.
 - B. All loads must be covered, and all truck beds must be sealed to prevent escape of solids or liquids.
 - C. All trucks transporting biosolids must carry copy of *City of Everett Biosolids Program Residuals Haul and Emergency Response Handbook*. See [Appendix B](#). All drivers must be trained and able to implement the emergency response outlined in the referenced handbook.
 - D. Trucks must be cleaned prior to leaving WPCF.
 - i. Water will be available to wash prior to off-site transportation.
2. City of Everett will provide certified scale for supplier to weigh biosolids hauled for the duration of the project
3. Contractor must haul biosolids by the most direct route to minimize potential public exposure.
4. Contractor must contact Everett Traffic Engineering Department and/or Snohomish County Public Works Department, or any other applicable agencies to ensure haul routes are not subject to constraints.

2.5 SPILL RESPONSE

1. The Contractor:
 - A. Will be responsible for any biosolid spills at any point during the transportation.
 - B. Must take immediate action to contain the spill and;
 - i. Prevent public contact,
 - ii. Divert traffic to prevent motorist from driving through spill,
 - iii. Remove and complete transportation of biosolids to application site,
 - iv. Will arrange for emergency response as necessary.
 - C. Contact the City project manager as soon as possible to inform them about spill.
 - D. Must remain at spill site until cleanup is completed to the approval of local jurisdictions and City project manager.
 - E. Will refer to Appendix B, *City of Everett Biosolids Program Residuals Haul and Emergency Response Handbook*, for a complete response procedure.
2. City Project Manager:
 - A. Will ensure the contractor provides an adequate response throughout the duration of any spillage incident in accordance with the *City of Everett Biosolids Program Residuals Haul and Emergency Response Handbook* found in Appendix B.

2.6 PICKUP LOCATION

Water Pollution Control Facility (WPCF)
4027 4th Street SE
Everett, WA 98201

See [Appendix C](#) for directions to WPCF and location of Biosolids Pad at WPCF.

2.7 PICKUP SITE HOURS

1. The Supplier will be given access to the WPCF biosolids pad.
2. Biosolids Pad access will be available from 6:00 am to 10:00 pm. Available 7 days per week.
 - A. Per Everett Municipal Code (EMC) 20.08, excessive noise is limited to the following times.
 - i. 7:00 a.m. to 10:00 p.m. on weekdays
 - ii. 8:00 a.m. to 6:00 p.m. on weekends and state recognized holidays.
3. Provide a work schedule seven days in advance for approval by City's project manager.
4. Supplier must coordinate all activities with Project Manager to ensure operations don't conflict with other projects at the WPCF.
5. Supplier must notify project manager twenty-four (24) hours in advance of any requirements to relocate equipment to perform requirements of specifications.

2.8 WEIGHING OF MATERIAL

1. The City of Everett will provide a certified scale to supplier to weigh biosolids prior to departure from WPCF.
 - A. Biosolids will be weighed by wet tons.
 - B. Wet tons are determined by gross weight of a loaded truck less the tare weight.
2. On a daily basis, the supplier must provide the City of Everett a receipt of the net weight of biosolids hauled.
 - A. Receipts provided must include;
 - i. Truck identification number,
 - ii. Date of haul,
 - iii. Net weight per truck.

2.9 BIOSOLIDS APPLICATION RATE CALCULATION SUBMITTAL

All suppliers must submit a draft application rate calculation worksheet. Application rate worksheets can be submitted with bids or must be submitted by the end of the third business day following bid opening for the bid to be considered responsive.

1. Worksheets must be submitted for the proposed site location(s) listed in the bid. Calculations must use the data provided in [Appendix A](#). A sample rate calculation worksheet is provided in [Appendix D](#).
2. To be considered for award, the Site-Specific Land Application Plan must be submitted by the end of the seventh business day following the bid opening to the City.

2.10 CONTRACTOR REGISTRATION

The City of Everett is prohibited from executing a contract with a Contractor who is not registered or licensed as required by state law.

2.11 PREVAILING WAGE REQUIREMENTS

This Request for Proposal includes work that is subject to prevailing wages as required by RCW 39.12 and RCW 49.28 (Hours of Labor) as amended or supplemented.

1. The wage rates to be paid to all laborers, workers, and mechanics that perform loading, hauling, and unloading of biosolids as a part of this Contract shall not be less than the prevailing wage rates as required by Chapter 39.12 of the Revised Code of Washington, as amended. This requirement applies to laborers, workers, and mechanics whether they are employed by the Vendor, Subvendors, Sub-subvendors, or any other person who performs a portion of the Work completed by this Contract.
2. The State of Washington prevailing wage rates applicable for this solicitation, which is located in Snohomish County, may be found at the following website address for the Department of Labor & Industries: <https://fortress.wa.gov/lni/wagelookup/>

In referencing such rates, The City of Everett does not imply or warrant that the Supplier will find labor available at those rates. It is the Supplier's sole responsibility to determine the wage rates actually paid.

2.12 INTENTS & AFFIDAVITS

Upon receipt of the required documents, the awarded contractor will receive a purchase order which will serve as the contract. Purchase order number and department or requester full name **must** be on all invoices.

At the start of every contract period, the contractor (and any subcontractors if applicable) must file a Statement of Intent to Pay Prevailing Wages with the Industrial Statistician of the Department of Labor and Industrial Services (DLIS). The Department of Labor and Industries charges a fee for such approval and certification, which shall be paid by the Contractor. Any change in the fee will not be grounds for revision of the Contract Sum.

No payment will be made on this contract until the contractor has submitted a 'Statement of Intent to Pay Prevailing Wages' that has been approved by the Department of Labor and Industries. At the end of each contract year, the vendor shall submit an Affidavit of Wages Paid' that has been approved by the Department of Labor and Industries. The City of Everett may hold payments until the contractor (and each and every subcontractor if applicable) has submitted an 'Affidavit of Wages Paid' and a new Statement of Intent to Pay Prevailing Wages that has been approved by the Department of Labor and Industries for the new contract year. With each invoice, the Contractor will attach or write a statement that wages paid were in compliance with applicable Prevailing Wage rates.

2.13 MULTIPLE AWARD

The City of Everett may enter into contracts with multiple suppliers with the intention that Class B biosolids would be made available to bidders in the order of the rate per wet ton rates submitted, starting with the lowest bid rate. Accordingly, the City may adjust the total available wet tons of Class B biosolids available to be delivered to each application site. If necessary, considering the agronomic rate(s), the city may adjust the total available wet tons of class B biosolids made available to the supplier.

2.14 PAYMENT

Within 30 days after picking up of bio-solids and a properly prepared invoice but not more often than once per month the City of Everett will pay the Supplier according to the rate(s) stated on the price sheet.

No down payment or advance payment of any kind will be made. Washington State law requires proof that the services rendered, or the labor performed as described before payment may be made. All invoices must list the PO number and are to be submitted to the following address:

City of Everett - Accounts Payable
PO Box 12130
Everett, WA 98206
accountspayable@everettwa.gov

FORM 3.02 SUPPLIER COMMITMENT AND INFORMATION

ITB#2021-008 BIOSOLIDS LOADING, HAULING & LAND APPLICATION

Company Name:		
Company Address:		
City:	State:	ZIP:
Tax ID #:	UBI #:	
Legal status of supplier organization, i.e., corporation, partnership, sole proprietorship.		
Website:	City of Everett Business License #	
Supplier Contact Name (if different from Authorizing Official):	Supplier Contact Title:	
Supplier Contact Email:	Supplier Contact Direct Phone:	
Supplier Contact Address (If different from above):		
City:	State:	ZIP:

By responding to this solicitation, the Supplier understands and agrees to be bound by all requirements and contract terms and conditions contained in this solicitation. By signing this form, the Supplier acknowledges receipt and understanding of any and all addenda issued for this solicitation. This form, signed by an individual authorized to legally commit the Supplier, shall be submitted as the cover page.

The Supplier also certifies that:

- I am authorized to commit my firm to this Bid and that the information herein is valid for 90 days from this date.
- That all information presented herein is accurate and complete and that the scope of work can be performed as presented in this proposal upon the City's request.
- That I have had an opportunity to ask questions regarding this Bid and that those questions have been answered.
- That this Bid response is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting an offer for this bid and is in all respects fair and without collusion or fraud.

Authorizing Official Name:	Authorizing Official Title:
Authorizing Official Email:	Authorizing Official Phone:
Authorizing Official Signature and date:	

FORM 3.03 PRICE SHEET

INVITATION TO BID #2021-008 BIOSOLIDS LOADING, HAULING & LAND APPLICATION

Supplier Name:

Complete the price sheet per the following instructions:

- 1) Complete the location and number of acres where the biosolids will be applied.
- 2) Provide the rate per wet ton to load, haul, and apply Class B biosolids.
- 3) Provide the Maximum tons that you will accept, load, haul, and apply.
- 4) Multiply the rate per wet ton by the maximum accepted wet tons.
- 5) Provide the earliest start date that you are available to begin hauling.
- 6) If bidding multiple application locations, complete a description line for each location that the biosolids will be applied at.
- 7) Submit the draft biosolids application rate calculation by the end of the third business day following bid opening, per section 2.9.
- 8) The SSLAP must be submitted by the end of the seventh business day following the bid opening.
- 9) Award and Notice to Proceed will be provided through the issuance of a purchase order following award by city council.

If there is a conflict between the unit price and the extended price, the unit price shall govern. Award will be made per line, in the order of the bid rates submitted, starting with the lowest bid rate.

#	Description	2. Rate Per Wet Ton	3. Maximum Wet Tons-Accepted	4. Extended Price
A	Rate per wet tons to load and haul Class B Biosolids 1. Site Location: _____ 2. Number of Acres Solids Will be Applied to: _____	\$	Wet Tons	\$
B	Rate per wet tons to load and haul Class B Biosolids 1. Site Location: _____ 2. Number of Acres Solids Will be Applied to: _____	\$	Wet Tons	\$

C	Rate per wet tons to load and haul Class B Biosolids	\$		\$
	1. Site Location: _____			
	2. Number of Acres Solids Will be Applied to: _____		Wet Tons	
	Subtotal			\$
9.8 % Sales tax			\$	
Total			\$	
5. Earliest Start Date:				
Do you certify that you are NOT on the Comptroller General's list of ineligible contractors nor the list of parties excluded from Federal procurement or non-procurement programs?				
Yes <input type="checkbox"/> No <input type="checkbox"/>				

*Note: Quantities above are current best estimates for evaluation purposes only. Actual purchase quantities may vary.

State the number of calendar days needed to complete work per specifications after receipt of order:

CITY OF EVERETT

STANDARD TERMS AND CONDITIONS

INVITATION TO BID, REQUEST FOR QUOTATION & PURCHASE ORDER CONTRACT

1. **GOVERNING LAW/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 Snohomish County, Washington.
2. **COMPLIANCE WITH LAW –** Supplier, at its sole cost and expense, shall perform and comply with all applicable laws of the United States and the State of Washington; the Charter, Municipal Code and ordinance of the City of Everett; and rules, regulations, orders, and directives of the City.
3. **RATIFICATION -** Acts taken pursuant to this Contract but prior to its effective date are hereby ratified and confirmed.
4. **SEVERABILITY -** Any invalidity, in whole or in part, of any provision of this Purchase Order shall not affect the validity of any other of its provisions.
5. **CHANGES-** No alteration in any of the terms, conditions, delivery price, quality, quantities, or specification of this order will be effective without written consent of the Procurement Manager or appropriate Buyer.
6. **HANDLING-** No charges will be allowed for handling, including but not limited to packing, wrapping bags, containers or reels, unless otherwise stated herein.
7. **BINDING EFFECT-** The provisions, covenants and conditions provided bind the parties, their legal heirs, representatives, successors, and assigns.
8. **AMENDMENTS/CHANGE ORDERS.** No alteration, change, modification or amendment to this Contract is effective unless by an instrument in writing executed by the legally authorized parties hereto. Any changes in the scope of work or compensation shall be mutually agreed upon between City and the Supplier and shall be incorporated in written amendments to the Contract.
9. **DELIVERY-** For any exception to the delivery date as specified on this order, supplier shall give prior notification and obtain written approval thereto from the Procurement Manager or appropriate Buyer with respect to delivery under this order. Time is of the essence and the order is subject to termination for failure to deliver as specified and/or appropriate damages.

The acceptance by the Purchaser of late performance with or without objection or reservation shall not waive the right to claim damage for such breach nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Supplier.
10. **PAYMENTS, CASH DISCOUNT, LATE PAYMENT CHARGES-** The City will pay supplier submitted invoices within (30) days after the City's receipt and acceptance of the good or completion and acceptance of the services, provided that the Supplier has listed all appropriate information on the invoice and complied with all contractual requirements. Invoices will not be processed for payment nor will the period of computation for cash discount commence until receipt of a properly completed invoice or invoiced items are received, whichever is later.

The City reserves the right to require the Supplier to correct any submitted or paid erroneous invoices according to the rates set forth herein. City and Supplier agree that any amount paid in error by City does not constitute a change in the agreed upon amount; Supplier agrees to issue a refund of any overages paid in error by the City. The total on the Purchase Order is to be the not-to-exceed amount and is not to be construed as a guaranteed amount due to Supplier.

If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized.
11. **SHIPPING INSTRUCTIONS-** Unless otherwise specified, all goods are to be shipped prepaid, F.O.B. Destination. Where shipping addresses indicate room numbers it will be up to the Supplier to make delivery to that location at no additional charge where specific authorization is granted to ship goods FOB shipping point. Supplier agrees to prepay all shipping charges, route as instructed or if instructions are not provided, route by cheapest common carrier and to bill the Purchaser as a separate item on the invoice for said charges. Each invoice for shipping charges shall contain the original or a copy of the bill indicating that the payment for shipping has been made. It is also agreed that the Purchaser reserves the right to refuse COD shipments.

12. REJECTION- All goods or materials purchased herein are subject to approval by the Purchaser. Any rejection of goods or material resulting because of nonconformity to the terms and specifications of this order, whether held by the Purchaser or returned, will be at Supplier's risk and expense.
13. IDENTIFICATION- All invoices, packing lists, packages, shipping notices, instruction manuals, and other written documents affecting this order shall contain the applicable purchase order number.
14. INFRINGEMENTS- Supplier agrees to protect and save harmless the Purchaser against all claims, suits or proceedings for patent, trademark, copyright or franchise infringement arising from the purchase, installation, or use of goods and materials ordered, and to assume all expenses and damages arising from such claims, suits or proceedings.
15. WARRANTIES- Supplier warrants that articles supplied under this order conform to specifications herein and are fit for the purpose for which such goods are ordinarily employed, except that if a particular purpose is stated, the material must then be fit for that particular purpose.
16. ASSIGNMENTS- The provisions or moneys due under this contract shall only be assignable with prior written consent of the Procurement Manager or appropriate Buyer.
17. TAXES- Unless otherwise indicated the Purchaser agrees to pay all State of Washington sales or use tax. No charge by Supplier shall be made for federal excise taxes, and the Purchaser agrees to furnish Supplier, upon acceptance of articles supplied under this order with an exemption certificate.
18. LIENS, CLAIMS AND ENCUMBRANCES- Supplier warrants and represents that all the goods and materials ordered herein are free and clear of all liens, claims, or encumbrances of any kind.
19. RISK OF LOSS- Regardless of FOB point, Supplier agrees to bear all risks of loss, injury or destruction of goods and materials ordered herein which occur prior to delivery. Such loss, injury or destruction shall not release Supplier from any obligation hereunder.
20. SAVE HARMLESS- Supplier shall protect, indemnify, and save the Purchaser harmless from and against any damage, cost or liability for any injuries to persons or property arising from acts or omissions of Supplier, his employees, agents or subcontractors howsoever caused.
21. PRICES- If price is not stated on this order, it is agreed that the goods shall be billed at the price last quoted or paid, or prevailing market price whichever is lower.
22. TERMINATION- In the event of a breach by Supplier of any of the provisions of this contract, the Purchaser reserves the right to cancel and terminate this contract forthwith upon giving oral or written notice to Supplier. Supplier shall be liable for damages suffered by the Purchaser resulting from Supplier's breach of contract.

The City, at its sole discretion, may terminate this Contract for convenience at any time for any reason. Termination is effective immediately upon notice of termination given by the City. In the event this Contract is terminated prior to the full delivery of goods and/or services. Supplier will only be paid for the work or goods accepted, at the City's sole discretion, at the time of termination of the Contract.
23. INDEPENDENT CONTRACTOR - Supplier, its subcontractors, agents and employees are independent Suppliers performing services for the City and are not employees of City. The Supplier, its subcontractors, agents and employees, shall not, as a result of this Contract, accrue leave, retirement, pension, insurance, bonding or any other benefits afforded to City employees. The Supplier, its subcontractors, agents and employees, shall not bind the City in any way except as may be specifically provided herein. The Supplier shall have the authority to control and direct the performance and details of the work described herein.
24. INSURANCE - The Supplier must obtain and keep in force during the entire term of this Contract, 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 must be by the Supplier, subcontractor or anyone directly or indirectly employed by either the Supplier or a subcontractor. The amount of coverage provided by such insurance must be not less than one million (\$1,000,000) combined single limit for bodily injury and property damage not less than five hundred thousand (\$500,000) combined single limit for automobile liability. The Supplier agrees to the following requirements relating to insurance coverage:
 - a. LIABILITY INSURANCE - All liability insurance required herein must be under a comprehensive or commercial general liability and business, automobile policy or policies. The City must be named as a Certificate Holder and an additional insured with respect to all such policies. Copies of all such policies must be furnished to the City upon request.
 - b. WORKER'S COMPENSATION - Supplier must take out and maintain during the life of the Contract, Worker's Compensation, including Washington State Stop Gap, insurance for all its employees engaged in

work under or pursuant to this Contract who are required to be so covered by the laws of the State of Washington and in case any work is subcontracted, the Supplier must require the subcontractor to provide worker's compensation insurance for all of its employees unless or to the extent that such employees are covered by the protection provided by the Supplier.

- c. EMPLOYMENT SECURITY - Supplier must comply with all employment security laws of the State of Washington and must timely make all required payments in connection therewith.

- 25. NONDISCRIMINATION AND AFFIRMATIVE ACTION- The supplier agrees not to discriminate against any client, employee or applicant for employment or services because of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap with regard to, but not limited to, the following employment upgrading, demotion, or transfer, recruitment or recruitment advertising, lay-offs or termination, rates of pay or other forms of compensation, selection for training or rendition of services.

It is further understood that any supplier who is in violation of this clause or an applicable Affirmative Action Program shall be barred forthwith from receiving awards of any purchase order from the CITY unless a satisfactory showing is made that discriminatory practices or noncompliance with applicable Affirmative Action Programs have terminated and that a recurrence of such acts is unlikely.

- 26. LABOR AND INDUSTRIES Contractor is required to procure Labor and Industries permits F700-007-000 and F700-029-000 and abide by the requirements thereof. Copies of "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" shall be submitted to the City Clerk and Department of Labor and Industries.
- 27. ANTI-TRUST Supplier and the Purchaser recognize that in actual economic practice overcharges resulting from anti-trust violations are in fact borne by the Purchaser. Therefore, Supplier hereby assigns to the Purchaser any and all claims for such overcharges.
- 28. OWNERSHIP OF RECORDS AND DOCUMENTS - All materials, writings and products produced by Supplier in the course of performing this Contract shall immediately become the property of the City. In consideration of the compensation provided for this Contract, the Supplier hereby further assigns all copyright interests in such materials, writing and products to the City. A copy may be retained by the Supplier.
- 29. DEFAULT -The Supplier covenants and agrees that in the event suit is instituted by the Purchaser for any default on the part of the Supplier, and the Supplier is adjudged by a court of competent jurisdiction to be in default, he shall pay to the Purchaser all cost, expenses expended or incurred by the Purchaser in connection therewith, and reasonable attorney's fees. The Supplier agrees that the Superior Court of the State of Washington shall have jurisdiction over any such suit, and that venue shall be laid in Snohomish County.
- 30. BRAND NAME- When a special brand is named it shall be construed solely for the purpose of indicating the standards of quality, performance, or use desired. Brands of equal quality, performance, and use shall be considered, provided Supplier specifies the brand and model and submits descriptive literature when available. Any bid containing a brand which is not of equal quality, performance, or use specified must be represented as an alternate and not as an equal, and failure to do so shall be sufficient reason to disregard the bid.
- 31. ACCEPTANCE BY ACCEPTING THIS PURCHASE ORDER IN WRITING OR BY DELIVERING THE MATERIAL ORDERED, YOU ACCEPT ALL OF THE TERMS AND CONDITIONS SET FORTH. FORMAL OBJECTION IS HEREBY MADE TO ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY SUPPLIER AS A CONDITION OF ACCEPTANCE OR DELIVERY.