

SMALL PUBLIC WORKS CONTRACT

FOR

KOBAYASHI FIRE DAMAGE REPAIR PROJECT

THIS SMALL PUBLIC WORKS CONTRACT ("Contract") is dated effective this ____ day of _____, 2015 and is made by and between the City of University Place, a Washington municipal corporation ("City or Owner"), and Modern Builders, Inc ("Contractor").

A. The City desires to retain an independent contractor to furnish all tools, labor and materials necessary to rebuild/repair building damaged by fire due to vandalism; 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

1.1 Description of Work. 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 work, more particularly described in the Contract Documents attached hereto and incorporated by this reference Exhibit "A" which shall be completed to the City's satisfaction, within the time period prescribed by the City and pursuant to the direction of the City Manager or his or her designee.

1.2 Completion Date. The Work shall commence upon the effective date mutually agreed upon and shall continue until the completion of the Services, but in any event no later than thirty (30) working days from start of project. The Work shall not be deemed completed until the City has accepted the Work.

1.3 Performance Standard. Contractor shall perform the Work in a manner consistent with accepted practices for other properly licensed contractors.

1.4 Compliance with Laws. Contractor shall perform the Work in accordance with all applicable federal, state and City laws, including but not limited to all City ordinances, resolutions, standards or policies, as now existing or hereafter adopted or amended, and obtain all necessary permits and pay all permit, inspection or other fees, at its sole cost and expense.

1.5 Change Orders. The City may, at any time, without notice to sureties, order changes within the scope of the Work. Contractor agrees to fully perform any such alterations or additions to the Work. All such change orders shall be in the form of the Contract Change Order Agreement, which shall be signed by both the Contractor and the City, shall specifically state the change of the Work, the completion date for such changed Work, and any increase or decrease in the compensation to be paid to Contractor as a result of such change in the Work. Oral change orders shall not be binding upon the City unless confirmed in writing by the City. If any change hereunder causes an increase or decrease in the Contractor's cost of, or time required for, the performance or any part of the Work under this Contract, an equitable adjustment will be made and the Contract modified in writing accordingly.

If the Contractor intends to assert a claim for an equitable adjustment hereunder, it shall, within five (5) days after receipt of a written change order from the City or after giving the City the written notice required above, as the case may be, submit to the City a written statement setting forth the general nature and monetary extent of such claim; provided the City, in its sole discretion, may extend such five (5) day submittal period upon request by the Contractor. The Contractor shall supply such supporting documents and analysis for the claims as the City may require determining if the claims and costs have merit. No claim will be allowed for any costs incurred more than five (5) days before the Contractor gives written notice as required. No claim by the Contractor for an equitable adjustment hereunder will be allowed if asserted after final payment under this Contract.

1.6 Work and Materials Omitted. The Contractor shall, when directed in writing by the City, omit work, services and materials to be furnished under the Contract and the value of the omitted work and materials will be deducted from the Total Compensation and the delivery schedule will be reviewed if appropriate. The value of the omitted work, services and materials will be a lump sum or unit price, as mutually agreed upon in writing by the Contractor and the City. If the parties cannot agree on an appropriate deduction, the City reserves the right to issue a unilateral change order adjusting the price and the delivery schedule.

1.7 Utility Location. Contractor is responsible for locating any underground utilities affected by the Work and is deemed to be an excavator for purposes of Chapter 19.122 RCW, as amended. Contractor shall be responsible for compliance with Chapter 19.122 RCW, including utilization of the "one call" locator system before commencing any excavation activities.

1.8 Air Environment. Contractor shall fully cover any and all loads of loose construction materials including without limitation, sand, dirt, gravel, asphalt, excavated materials, construction debris, etc., to protect said materials from air exposure and to

minimize emission of airborne particles to the ambient air environment within the City of University Place.

2. TERM

This Contract shall commence on the effective date of this Contract and continue until the completion of the Work ("Term") and the expiration of all warranties.

3. WARRANTY

3.1 Requisite Skill. The Contractor warrants that it has the requisite skill to complete the Work, and is appropriately accredited and licensed by all applicable agencies and governmental entities. Contractor represents that it has visited the site and is familiar with all of the plans and specifications in connection with the completion of the Work.

3.2 Defective Work. The Contractor shall, at its sole cost and expense, correct all Work which the City deems to have defects in workmanship and material discovered within two (2) years after the City's final acceptance of the Work.

4. COMPENSATION

4.1 Total Compensation. In consideration of the Contractor performing the Services, the City agrees to pay the Contractor an amount no greater than \$29,000.00. This amount shall include all services provided, as well as any reimbursable expenses and applicable taxes.

4.2 Contractor Responsible for Taxes. 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.

4.3 Nonpayment. 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 discretion, which shall be withheld until such time as Contractor modifies or repairs the Work so that the Work is acceptable to the City.

4.4 Method of Payment. Payment by the City for the Work will only be made after the Work has been completed, a voucher or invoice is submitted in the form specified by the City, and the appropriate City representative approves such invoice. Payment shall be made within thirty (30) days of receipt of such invoice or voucher unless otherwise set forth. The Contractor's acceptance of such payment for the Work shall constitute full compensation for the performance of the Work. Invoices shall be submitted, in duplicate to:

City of University Place
3715 Bridgeport Way West
University Place, WA 98466

ATTN: Accounts Payable

4.5 Retainage. Pursuant to Chapter 60.28 RCW, five percent (5%) of the Total Compensation shall be retained by the City to assure payment of Contractor's state taxes as well as payment of subcontractors, suppliers and laborers. Upon execution of this Contract, Contractor shall complete, execute and deliver to the City the Contractor's Retainage Agreement attached hereto as Exhibit "E". No payments shall be made by the City from the retained percentage fund ("Fund") nor shall the City release any retained percentage escrow account to any person, until the City has received from the Department of Revenue a certificate that all taxes, increases, and penalties due from the Contractor and all taxes due and to become due with respect to the Contract have been paid in full or that they are, in the Department's opinion, readily collectible without recourse to the State's lien on the retained percentage. Upon non-payment by the general contractor, any supplier or subcontractor may file a lien against the retainage funds, pursuant to Chapter 60.28 RCW. Subcontractors or suppliers are required to give notice of any lien within forty-five (45) days of the completion of the Work and in the manner provided in RCW 39.08.030. Within sixty (60) days after completion of all Work on this Contract, the City shall release and pay in full the money held in the Fund, unless the City becomes aware of outstanding claims made against this Fund.

5. EQUAL OPPORTUNITY EMPLOYER

In all Contractor services, programs or activities, and all Contractor hiring and employment made possible by or resulting from this Contract, there shall be no discrimination by Contractor or by Contractor's employees, agents, subcontractors or representatives against any person because of sex, age (except minimum age and retirement provisions), race, color, creed, national origin, marital status or the presence of any disability, including sensory, mental or physical handicaps, unless based upon a bona fide occupational qualification in relationship to hiring and employment. This requirement shall apply, but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor shall not violate any of the terms of Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, Section 504 of the Rehabilitation Act of 1973 or any other applicable federal, state or local law or regulation regarding non-discrimination. Any material violation of this provision shall be grounds for termination of this Contract by the City and, in the case of the Contractor's breach, may result in ineligibility for further City agreements.

6. INDEPENDENT CONTRACTOR/CONFLICT OF INTEREST

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 pay all income and other taxes as due. Industrial or any other insurance, which 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 Contract to an employment contract. It is recognized that Contractor may or will be performing work during the Term for other parties; provided, however, that such performance of other work shall not conflict with or interfere with the Contractor's ability to perform the Work. Contractor agrees to resolve any such conflicts of interest in favor of the City.

7. TERMINATION

Prior to the expiration of the Term, the City may terminate this Contract immediately, with or without cause. The Contractor may cancel this Contract only upon thirty -(30) days prior written notice to the City.

8. INDEMNIFICATION

8.1 Contractor Indemnification. The Contractor agrees to indemnify, defend and hold the City, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Contract to the extent caused by the negligent acts, errors or omissions of the Contractor, its partners, shareholders, agents, employees, or by the Contractor's breach of this Contract. 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.

8.2 City Indemnification. The City agrees to indemnify, defend and hold the Contractor, its officers, directors, shareholders, partners, employees, and agents harmless from any and all claims, demands, losses, actions and liabilities (including costs and attorney fees) to of by any and all persons or entities, including without limitation, their respective agents, licensees, or representatives, arising from, resulting from or connected with this Contract to the extent solely caused by the negligent acts, errors, or omissions of the City, its employees or agents.

8.3 Survival. The provisions of this Section shall survive the expiration or termination of this Contract with respect to any event occurring prior to such expiration or termination.

9. INSURANCE

The Contractor agrees to carry as a minimum, the following insurance, in such forms and with such carriers who have a rating, which is satisfactory to the City:

9.1 Workers' compensation and employer's liability insurance in amounts sufficient pursuant to the laws of the State of Washington.

9.2 Commercial general liability insurance with combined single limits of liability not less than \$2,000,000 for bodily injury, including personal injury or death, products liability and property damage.

9.3 Automobile liability insurance with combined single limits of liability not less than \$2,000,000 for bodily injury, including personal injury or death and property damage.

9.4 If any structures are involved in the Contract, the Contractor shall maintain an All Risk Builder's Risk form at all times in an amount no less than the value of the structure until final acceptance of the project by the City.

The City shall be named as additional insured on all such insurance policies, with the exception of workers' compensation coverages. Contractor shall provide certificates of insurance, concurrent with the execution of this Contract, evidencing such coverage and, at City's request, furnish the City with copies of all insurance policies and with evidence of payment of premiums or fees of such policies. All insurance policies shall contain a clause of endorsement providing that they may not be terminated or materially amended during the Term of this Contract, except after thirty -(30) days prior written notice to the City. If Contractor's insurance policies are "claims made" or "claims paid", Contractor shall be required to maintain tail coverage for a minimum period of three (3) years from the date this Contract is actually terminated. Contractor's failure to maintain such insurance policies shall be grounds for the City's immediate termination of this Contract.

The provisions of this Section shall survive the expiration or termination of this Contract with respect to any event occurring prior to such expiration or termination.

9.5 Asbestos Abatement or Hazardous Materials. If asbestos abatement or hazardous materials work is performed, Contractor shall review coverage with the City's Risk Manager and provide scope and limits of coverage that are appropriate for the scope of Work and are satisfactory to the City. Contractor shall not commence any Work until the Risk Manager has approved its coverage.

10. PERFORMANCE/PAYMENT BOND OR ADDITIONAL RETAINAGE

Pursuant to RCW 39.08.010, Contractor shall provide a Performance/Payment Bond in an amount equal to 100% of the amount of this Contract to cover the performance of all provisions of this Contract and the payment of all laborers and suppliers. The Performance/Payment bond shall be in a form attached hereto as Exhibit "D". The Performance/Payment bond shall assure that the Contractor will faithfully perform all of the provisions of the Contract as well as pay all laborers, mechanic subcontractors, materialmen and suppliers. Contractor's obligations under this Contract shall not be limited to the bond amount.

Alternatively, pursuant to RCW 39.08.010, at the option of Contractor, and based upon the value of this Contract as less than Twenty-Five Thousand Dollars (\$25,000.00), the City shall, in lieu of a bond, retain fifty percent (50%) of the Contract amount for a period of thirty (30) days after the date of final acceptance, or until receipt of all necessary releases from the Department of Revenue and the Department of Labor and Industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

11. MAINTENANCE BOND

Contractor will provide a maintenance bond guaranteeing work shall be free of any defective materials or workmanship which became apparent during the period of 1 year following completion of the Contract. Bond shall be in a form acceptable to the City of University Place. Bond shall be in the amount of 10% of the contract price.

Surety shall be licensed to conduct business in the State of Washington and are named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department.

12. SAFETY

Contractor shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of federal, state and municipal safety and health laws and codes, including without limitation, all OSHA/WISHA requirements, Safety and Health Standards for Construction Work (Chapter 296-155 WAC), General Safety and Health Standards (Chapter 296-24 WAC), and General Occupational Health Standards (Chapter 296-62 WAC). Contractor shall erect and properly maintain, at all times, all necessary guards, barricades, signals and other safeguards at all unsafe places at or near the Work for the protection of its employees and the public, safe passageways at all road crossings, crosswalks, street intersections, post danger signs warning against known or unusual hazards and do all other things necessary to prevent accident or loss of any kind. Contractor shall protect from damage all water, sewer, gas, steam or other pipes or conduits, and all hydrants and all other property that is likely to become displaced or damaged by the execution of the Work. The Contractor

shall, at its own expense, secure and maintain a safe storage place for its materials and equipment and is solely responsible for the same.

13. **PREVAILING WAGES**

13.1 Wages of Employees. This Contract is subject to the minimum wage requirements of Chapter 39.12 of the Revised Code of Washington, as now existing or hereafter amended or supplemented. In the payment of hourly wages and fringe benefits to be paid to any of Contractor's laborers, workpersons and/or mechanics, Contractor shall not pay less than the "prevailing rate of wage" for an hour's work in the same trade or occupation in the locality within the State of Washington where such labor is performed, as determined by the Industrial Statistician of the Department of Labor and Industries of the State of Washington, which "prevailing rates of wage" are attached hereto as Exhibit "H" and incorporated herein by this reference. Prevailing wages paid pursuant to this Agreement shall be the prevailing wage rates, which are in effect on the date when the bids, proposals, or quotes were required to be submitted to the City.

13.2 Exemptions to Prevailing Wage. The prevailing wage requirements of Chapter 39.2 RCW, and as required in this Contract do not apply to:

- (1) Sole owners and their spouses;
- (2) Any partner who owns at least 30% of a partnership;
- (3) The President, Vice President and Treasurer of a corporation if each one owns at least 30% of the corporation.

13.3 Reporting Requirements. Contractor shall comply with all reporting requirements of the Department of Labor and Industries of the State of Washington. Upon the execution of this Contract, Contractor shall complete and file a Statement of Intent to Pay Prevailing Wages with the Department of Labor and Industries. Upon completion of the Work, Contractor shall complete and file an Affidavit of Wages Paid with the Department of Labor and Industries. Contractor shall deliver copies of both the Statement of Intent to Pay Prevailing Wages and the Affidavit of Wages Paid, certified by the Department of Labor and Industries, to the City.

13.4 Disputes. In the event any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be resolved by the City and the Contractor, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries of the State of Washington and the decision therein shall be final and conclusive and binding on all parties involved in the dispute.

14. FAILURE TO PAY SUBCONTRACTORS

In the event the Contractor shall fail to pay any subcontractors or laborers, or fail to pay for any materials, the City may terminate this Contract and/or the City may withhold from the money which may be due the Contractor an amount necessary for the payment of such subcontractors, laborers, or materials.

15. 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 shall become the property of the City and shall be delivered to the City at its request.

16. CONFIDENTIALITY

Any records, reports, information, data or other documents or materials given to or prepared or assembled by the Contractor under this Contract will be kept as confidential and shall not be made available to any individual or organization by the Contractor without prior written approval of the City.

17. BOOKS AND RECORDS

The Contractor agrees to maintain books, records, and documents which sufficiently and properly reflect all direct and indirect costs related to the performance of this Contract and such accounting procedures and practices as may be deemed necessary by the City to assure proper accounting of all funds paid pursuant to this Contract. These records shall be subject at all reasonable times to inspection, review or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Contract.

18. CLEAN UP

At any time ordered by the City and immediately after completion of the Work, the Contractor, shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Work. In the event the Contractor fails to perform the necessary clean up, the City may, but in no event is it obligated to, perform the necessary clean up and the costs thereof shall be immediately paid by the Contractor to the City and/or the City may deduct its costs from any remaining payments due to the Contractor.

19. GENERAL PROVISIONS

19.1 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.

The term "Contract Documents" means and includes the following:

- 1 Small Public Works Contract
- 2 Scope of Work - Exhibit A
- 3 Retainage Form – Exhibit B
- 4 Performance/Payment Bond – Exhibit C
- 5 Maintenance Bond – Exhibit D
- 6 Change Order(s)(if any) – Exhibit E
- 7 Prevailing Wage – Exhibit F

19.2 Modification. No provision of this Contract may be amended or added to except by agreement in writing signed by the Parties or their respective successors in interest.

19.3 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.

19.4 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.

19.5 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.

19.6 Attorney Fees. In the event the City or the Contractor defaults on the performance of any terms in this Contract, and the Contractor or City places the enforcement of the Contract or any part thereof, or the collection of any monies due, or to become due hereunder, or recovery of possession of any belongings, in the hands of an attorney, or file suit upon the same, each Party shall pay all its own attorneys' fees, costs and expenses. The venue for any dispute related to this Contract shall be King County, Washington.

19.7 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.

19.8 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.

19.9 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.

19.10 Notices. Any notices required to be given by the City to Contractor or by the Contractor to the City 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.

19.11 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.

19.12 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.

19.13 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.

19.14 Conflicting Provisions. In the event of a conflict between the terms and provisions of any of the Contract Documents, the City Manager or his or her designee shall issue an interpretation of the controlling document, which interpretation shall be final and binding.

Executed on the dates written below.

MODERN BUILDERS

CITY OF UNIVERSITY PLACE

By: _____

By: _____

Printed Name: _____

Printed Name: Stephen Sugg

Title: _____

Title: City Manager

Address: _____

Address: 3715 Bridgeport Way West

University Place, WA 98466

Date: _____

Date: _____

Approved as to form:

Steve Victor, City Attorney

EXHIBIT B

CONTRACTOR'S RETAINAGE AGREEMENT

IDENTIFICATION AND DESCRIPTION

Project Title _____
Contractor _____ Representative _____
Bid No. _____ Date _____ Administering Department _____
City Representative _____ Funding Source _____
Project Authority _____

RETAINAGE FORMULA

In accordance with applicable State Statutes, the following provisions will be made for the disposition of the retainage held for investment:

1. All investments selected below are subject to City approval.
2. Retainage under this agreement will be held in escrow by the _____ (referred to herein as the Bank), the terms of which are specified by separate escrow agreement. The cost of the investment program and the risk thereof is to be borne entirely by the contractor.
3. The final disposition of the contract retainage will be made in accordance with applicable statutes.

CONTRACTOR'S INSTRUCTIONS

Pursuant to R.C.W. 60.28.010 I hereby notify the City of University Place of my instructions to ____ invest ____ not to invest the retainage withheld under the terms of this contract. If the investment option is selected, please provide the following information:

Name of Bank, Mutual Fund, or Savings & Loan Association: _____
Address: _____
Account #: _____ Contact Person: _____
Contractor _____ Date: _____
By: _____ Title: _____
Address: _____ Phone: _____
Fed ID# _____ Est. Completion Date _____

CITY APPROVAL _____

Approval of Investment Program and Retainage Agreement

Finance Director Date

CERTIFICATION FOR RELEASE OF CONTRACT RETAINAGE

Contract No. _____ Project Title: _____
I hereby certify, as Contract Administrator for this Contract representing the City of University Place, that all work required by the above cited contract was completed on _____ and final acceptance by the City was granted on _____

I also certify that no liens have been received within 30 days from the above date from any person, persons, mechanics, subcontractors or materialman who has performed any work or provided any material of subject contract.

Contract Administrator

Director of Administering Department

Also, please find attached certifications by the applicable state agencies of the receipt of: 1) Washington State Business Taxes (Washington State Dept. of Revenue); 2) Industrial Insurance Premiums (State Dept. of Labor & Industries); and 3) Employment Security, Unemployment Insurance Premiums (State of Washington Employment Security Dept.).

EXHIBIT C

PERFORMANCE/PAYMENT BOND TO CITY OF UNIVERSITY PLACE

KNOW ALL PERSONS BY THESE PRESENTS that we, the undersigned, _____, as principal ("Principal"), and _____, a Corporation organized and existing under the laws of the State of _____, as a surety Corporation, and qualified under the laws of the State of Washington to become surety upon bonds of Contractors with Municipal Corporations, as surety ("Surety"), are jointly and severally held and firmly bound to the City of University Place ("City") in the penal sum of: _____ (_____) for the payment of which sum we bind ourselves and our successors, heirs, administrators or personal representatives, as the case may be.

This obligation is entered into in pursuant to the statutes of the State of Washington and the ordinances, regulations, standards and policies of the City, as now existing or hereafter amended or adopted.

Pursuant to proper authorization, the City Manager is authorized to enter into a certain public works contract with the Principal, providing for _____ is incorporated herein by this reference ("Contract"), and

The Principal has accepted, or is about to accept, the Contract, and undertake to perform the work therein provided for in the manner and within the time set forth.

NOW, THEREFORE, if the Principal shall perform all the provisions of the Contract in the manner and within the time period prescribed by the City, or within such extensions of time as may be granted under the Contract, and shall pay all laborers, mechanics, subcontractors and material men or women, and all persons who shall supply the Principal or subcontractors with provisions and supplies for the carrying on of said work, and shall hold the City, their officials, agents, employees and volunteers harmless from any loss or damage occasioned to any person or property by reason of any carelessness or negligence on the part of the Principal, or any subcontractor in the performance of said work, and shall indemnify and hold the City harmless from any damage or expense by reason of failure of performance as specified in the Contract, or from defects appearing or developing in the material or workmanship provided or performed under the Contract within a period of two years after its final acceptance thereof by the City, then and in the event this obligation shall be void; but otherwise, it shall be and remain in full force and effect.

And the Surety, for value received, hereby further stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed there under or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any change, extension of time, alterations or additions to the terms of the Contract or to the Work.

The Surety hereby agrees that modifications and changes may be made in the terms and provisions of the Contract without notice to Surety, and any such modifications or changes increasing the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this Performance Bond in a like amount, such increase, however, not to exceed twenty-five percent (25%) of the original amount of this bond without the consent of the Surety.

Within forty-five (45) days of receiving notice that the Principal has defaulted on all or part of the terms of the Contract, the Surety shall make a written commitment to the City that it will either: (a) cure the default itself within a reasonable time period, or (b) tender to the City, the amount necessary for the City to remedy the default, including legal fees incurred by the City, or (c) in the event that Surety's evaluation of the dispute is not complete or in the event the Surety disputes the City's claim of default, the Surety shall notify the City of its finding and its intent, if any, to interplead. The Surety shall then fulfill its obligations under this bond, according to the option it has elected. Should Surety elect option (a) to cure the default, the penal sum of the Bond shall be reduced in an amount equal to the costs actually incurred by the Surety in curing the default. If the Surety elects option (b), then upon completion of the necessary work, the City shall notify the Surety of its actual costs. The City shall return, without interest, any overpayment made by the Surety and the Surety shall pay to the City any actual costs which exceed the City estimate, limited to the bond amount. Should the Surety elect option (c), the Parties shall first complete participation in mediation, described in the below paragraph, prior to any interplead action.

In the event a dispute should arise between the Parties to this Bond with respect to the City's declaration of default by the Principal, the Parties agree to participate in at least four hours of mediation in accordance with the mediation procedures of United States Arbitration and Mediation ("USA&M"). The Parties shall proportionately share in the cost of the mediation. The mediation shall be administered by the Seattle USA&M office, 4300 Two Union Square, 601 Union Street, Seattle, Washington 98101-2327. The Surety shall not interplead prior to completion of the mediation.

The parties have executed this instrument under their separate seals this ____ day of _____, 2015, the name and corporate seal of each corporate party hereto affixed, and these presents duly signed by its undersigned representatives pursuant to authority of its governing body.

CORPORATE SEAL OF PRINCIPAL: [PRINCIPAL]

By: _____

(Name of Person Executing Bond)

Its: _____

(Title)

(Address)

(Phone)

CORPORATE SEAL OF SURETY:

Surety

By: _____
Attorney-in-Fact
(Attach Power of Attorney)

(Name of Person Executing Bond)

(Address)

(Phone)

APPROVED AS TO FORM:

STEVE VICTOR, CITY ATTORNEY

EXHIBIT D

CITY OF UNIVERSITY PLACE

MAINTENANCE BOND

BOND NUMBER: _____

DATE POSTED: _____

PROJECT COMPLETION DATE: _____

RE: City of University Place:
Contractor: _____
Project Address: _____

KNOW ALL PERSONS BY THESE PRESENTS: That we, _____, (hereinafter called the "Principal"), and _____ a corporation organized under the laws of the State of _____, and authorized to transact surety business in the State of Washington (hereinafter called the "Surety"), are held and firmly bound unto the City of University Place, Washington, in the sum of _____ dollars (\$ _____), lawful money of the United States of America, for the payment of which sum we and each of us bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents. THE CONDITIONS of the above obligation are such that:

WHEREAS, the above named Principal has constructed and installed certain improvements in connection with a project as described above within the City; and

WHEREAS, in order to provide security for the obligation of the Principal to repair and/or replace said improvement(s) against defects in workmanship, materials or installation for a period twelve (12) months after written and final acceptance of the same and approval by the City; and

WHEREAS, in order to enable the City to release the performance bond filed by the Principal with the City in connection with such improvements;

NOW, THEREFORE, this Maintenance Bond has been secured and is hereby submitted to the City. It is understood and agreed that this obligation shall continue in effect until released in writing by the City of University Place, but only after the Principal has performed and satisfied the following conditions:

The work or improvements installed by the Principal and subject to the terms and conditions of this Bond are as follows:

Remodeling services, construction of restrooms and accessories as specified within the specifications and plans and the necessary labor, materials, equipment, tools and guarantees thereof for installation of.

- A. The Principal and Surety agree that the work and improvements installed pursuant to the Performance Bond or other security instrument filed with the City in the above-referenced project shall remain free from defects in material, workmanship and installation (or, in the case of landscaping, shall survive) for a period of five (5) years after written and final acceptance of the same and approval by the City. Maintenance is defined as acts carried out to prevent a decline, lapse or cessation of the state of the project or improvements as accepted by the City during the 24 month period after final and written acceptance, and includes, but is not limited to, repair or replacement of defective workmanship, materials or installations.
- B. The Principal shall, at its sole cost and expense, carefully replace and/or repair any damage or defects in workmanship, materials or installation to the City-owned real property on which improvements have been installed, and leave the same in as good condition as it was before commencement of the work.
- C. The Principal and the Surety agree that in the event any of the improvements or restoration work installed or completed by the Principal as described herein, fail to remain free from defects in materials, workmanship or installation (or in the case of landscaping, fail to survive), for a period of five (5) years from the date of acceptance of the work by the City, the Principal shall repair and/or replace the same within ten calendar (10) days of demand by the City, and if the Principal should fail to do so, then the Surety shall:
1. Within twenty calendar (20) days of demand of the City, make written commitment to the City that it will either:
 - a) remedy the default itself with reasonable diligence pursuant to a time schedule acceptable to the City; or
 - b) tender to the City within an additional ten calendar (10) days the amount necessary, as determined by the City, for the City to remedy the default, up to the total bond amount.

Upon completion of the Surety's duties under either of the options above, the Surety shall then have fulfilled its obligations under this bond. If the Surety elects to fulfill its obligation pursuant to the requirements of subsection B(1)(b), the City shall notify the Surety of the actual cost of the remedy, upon completion of the remedy. The City shall return, without interest, any overpayment made by the Surety, and the Surety shall pay to the City any actual costs which exceeded the City's estimate, limited to the bid amount. In the event the Principal fails to make repairs or provide maintenance within the time period requested by the City, then the City, its employees and agents shall have the right at the City's sole election to enter onto said property described above for the purpose of repairing or maintaining the improvements. This provision shall not be construed as creating an obligation on the part of the City or its representatives to repair or maintain such improvements.

- D. Corrections. Any corrections required by the City shall be commenced within ten calendar (10) days of notification by the City and completed within thirty calendar (30) days of the date of notification. If the work is not performed in a timely manner, the City shall have the right, without recourse to legal action, to take such action under this bond as described in Section D above.

- E. Extensions and Changes. No changes, extension of time, alteration or addition to the work to be performed by the Principal shall affect the obligation of the Principal or Surety on this bond, unless the City specifically agrees, in writing, to such alteration, addition, extension or change. The Surety waives notice of any such change, extension, alteration or addition thereunder.

- F. Enforcement. It is specifically agreed by and between the parties that in the event any legal action must be taken to enforce the provisions of this bond or to collect said bond, the prevailing party shall be entitled to collect its costs and reasonable attorney fees as a part of the reasonable costs of securing the obligation hereunder. In the event of settlement or resolution of these issues prior to the filing of any suit, the actual costs incurred by the City, including reasonable attorney fees, shall be considered a part of the obligation hereunder secured. Said costs and reasonable legal fees shall be recoverable by the prevailing party, not only from the proceeds of this bond, but also over and above said bond as a part of any recovery (including recovery on the bond) in any judicial proceeding. The Surety hereby agrees that this Agreement shall be governed by the laws of the State of Washington. Venue of any litigation arising out of this Agreement shall be in Pierce County Superior Court.

- G. Bond Expiration. This bond shall remain in full force and effect until the obligations secured hereby have been fully performed and until released in writing by the City at the request of the Surety or Principal.

DATED this _____ day of _____, 2015.

SURETY COMPANY

CONTRACTOR

By _____

By _____

Its _____

Its _____

Business Name: _____

Business Name: _____

Business Address: _____

Business Address: _____

City/State/Zip Code: _____

City/State/Zip Code: _____

EXHIBIT F

State of Washington
Department of Labor & Industries
Prevailing Wage Section - Telephone 360-902-5335
PO Box 44540, Olympia, WA 98504-4540

Washington State Prevailing Wage

The PREVAILING WAGES listed here include both the hourly wage rate and the hourly rate of fringe benefits. On public works projects, worker's wage and benefit rates must add to not less than this total. A brief description of overtime calculation requirements are provided on the Benefit Code Key.

**Journey Level Prevailing Wage Rates for the Effective Date:
9/24/2015**

<https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>