

## CONTRACT

THIS Agreement, made effective as of the 5<sup>TH</sup> day of JANUARY, 2013, between

CITY OF FIFE, WASHINGTON ("OWNER")  
5411 23<sup>rd</sup> Street East  
Fife, WA 98424

Contact:

Tel:

Fax:

and

STAR CONSTRUCTION ("CONTRACTOR")

Contact: JACK LESSMANI Tel: (253) 841-3870 Fax: (253) 848-984

Tax Id No.: 91-1000692

for the following Project:

**City Hall ADA Curb Ramp ("PROJECT")**

**The Owner and Contractor agree as follows:**

**1. Contract Documents.** The Contractor shall complete the Project in accordance with the Contract Documents. The Contract Documents consist of the following in order of precedence:

- a. Addenda
- b. Contract Form
- c. Proposal Form
- d. Special Provisions
- e. Contract Plans
- f. 2012 WSDOT Standard Specifications for Road, Bridge, and Municipal Construction, except Sections 1-02.1, 1-02.2, 1-04.2, 1-08.9, 1-08.10(1) – (4), 1-09.11, and 1-09.13.

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Project by the Contractor. These Contract Documents complement each other in describing a complete work. Any requirement in one document binds as if stated in all. The Contractor shall provide any work or materials clearly implied in the Contract even if the Contract does not mention it specifically. If any part of the contract requires work that does not include a description of how the work will be performed, the work shall be performed in accordance with standard trade practices.

2. **Date of Commencement and Physical Completion Date.** The Contractor shall physically complete the Project within 4 working days, and shall commence work in a Wednesday.

3. **Contract Sum.** Subject to additions and deductions by change order, the contract sum is the bid amount of \$ 5403.27, including applicable tax. The contract sum shall include all items and services necessary for the proper execution and completion of the Project.

4. **Liquidated Damages.** Timely performance and completion of the Project is essential to Owner and time limits are of the essence. In the event Contractor fails to physically complete the work in 3 working days, plus any authorized extensions thereof, the Contractor shall pay Owner liquidated damages of \$1000.00 for each calendar day of delay in completion of the Project. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete the entire contract.

5. **Changes.** After execution of the Contract, changes in the Project may be accomplished by change order. Owner, without invalidating the Contract, may order changes in the Project within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract completion date being adjusted accordingly. Change orders shall be in writing signed by the parties.

6. **Permits, Fees, Notices, and Compliance with Laws.**

6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for all permits, fees, licenses and inspections by governmental agencies necessary for the proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

6.2 Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules, and regulations, and lawful orders of public authorities applicable to performance of the Work.

6.3 Contractor shall obtain a City of Fife business license pursuant to the provisions of Chapter 5.01 FMC prior to receipt of written Notice to Proceed.

7. **CDBG Requirements.** Funding for this project is provided by PIERCE COUNTY through the Community Development Block Grant ("CDBG") B-11-UC-53-0002 from the U.S. Department of Housing and Urban Development, CFDA number 14.218. As such, the Contractor shall comply with the following laws and regulations, whenever and wherever they are applicable, and shall include these requirements in all subcontracts and purchase orders for this Project:

1. Pierce County Ordinance No. 2009-74s, as codified in PCC 2.106, 3.08, and 3.20 requiring those who contract with the County, and consultants and subcontractors of those who contract with the County, to participate in the E-Verify program.

2. Title VI of the Civil Rights Act of 1964 (P.L. 88-352) relating to nondiscrimination in performance of the project and to the benefits deriving from it as implemented by HUD regulation 24 CFR 570.601 (a).

3. Title VIII of the Civil Rights Act of 1968 (P.L. 90-284) as amended, relating to nondiscrimination in housing as implemented by HUD regulation 24 CFR 570.601 (b).

4. Executive Order 11063 relating to non-discrimination in housing as amended by Executive Order 12259 and as implemented by HUD regulation 24 CFR 570.601 (c).

5. Section 109 of the Housing and Community Development Act of 1974 as amended, dealing with non-discrimination in program benefits because of race, religion, color, age, national origin, sex or disability as implemented by HUD regulation 24 CFR 570.602.
6. The construction labor standards and wage rates set forth in section 110 of the Housing and Community Development Act of 1974 as amended and as implemented by HUD regulation 24 CFR 570.603.
7. The Davis-Bacon Act (DBA) and Related Acts or HUD-assisted (DBRA) (40 U.S.C. 276a-276a-5) provides that contracts to which federal funding is applied for the construction, alteration, and/or repair, including painting and decorating, or of public buildings or public works, which involve the employment of laborers and/or mechanics, shall contain provisions with respect to minimum wages, fringe benefits, payments without deductions or rebates, withholding funds from contractors to ensure compliance with wage provisions, and termination of the contract or debarment for failure to adhere to the required provisions.
8. Executive Order 11246 dealing with non-discrimination in employment as amended by Executive Orders 11375 and 12086 and as implemented by HUD regulation 24 CFR 570.607 (a).

During the performance of this Agreement, the Contactor agrees as follows:

- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- 2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- 3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 5) The Contractor will furnish all information and reports, required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of

Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for the purpose of investigation to ascertain compliance with such rules, regulations, and orders.

- 6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies involved as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
  - 7) The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or Vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.
9. Section 3 of the Housing and Community Development Act of 1974 as amended, dealing with employment and training of County low-income residents as employees and trainees and utilization of Pierce County business as contractors, subcontractors, and suppliers as implemented by HUD regulations 24 CFR 570.607 (b):
- 1) Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low-and very low- income persons, particularly persons who are recipients of HUD assistance for housing.
  - 2) HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
  - 3) Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
  - 4) Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provide in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the

- subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- 5) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.
  - 6) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
  - 7) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7 (b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of section 3 and section 7 (b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7 (b)
10. Executive Order 11988 relating to evaluation of flood hazards and the flood hazard and insurance protection requirements of section 102(a) and 202(a) of the Flood Disaster Protection Act of 1973 (P.L. 93.234) as implemented by HUD regulation 24 CFR 570.605.
  11. The relocation, acquisition and displacement requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as implemented by HUD regulation 24 CFR 570.606.
  12. The Lead Based Paint Poisoning Prevention Act (43.U.S.C. 4801 et seq.) as implemented by HUD regulation 24 CFR 570.608.
  13. The regulations, policies, guidelines and uniform administrative requirements of OMB Circulars A-21, A-87, A-110, A-122 and A-128 as they relate to the acceptance and use of Federal funds as implemented by HUD regulation 24 CFR 570.610.
  14. The National Environmental Policy Act of 1969 and other statutory environmental requirements as implemented by HUD regulation 24 CFR 570.604.
  15. Executive Orders 11625, 12138 and 12432, and Public Law 98-507, dealing with the use of minority and women owned business enterprises as implemented by HUD regulation 24 CFR 85.36(e).
  16. The provisions of the Hatch Act limiting political activities of government employees.
  17. Executive Order 12888 relating to prevention, control and abatement of water pollution.
  18. HUD Regulations for implementing the community Development Block Grant Program contained in 24 CFR 570.
  19. The Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282).
  20. The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) and regulations set forth at 24 CFR part 21.

8. **Trench Excavation Safety.** Trench Excavation Safety does not apply to this contract.

9. **Termination of Contract.** This Contract may be terminated by Owner at any time upon the default of the Contractor or upon public convenience, in which Contractor shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination. Contractor shall not be entitled to any reallocation of cost, profit or overhead. Contractor shall not in any event be entitled to anticipated profit on work not performed because of such termination. Contractor shall use its best efforts to minimize the compensation payable under this Contract in the event of such termination. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to Owner resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by Owner in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by Owner by reason of such default.

10. **Warranty** Contractor warrants that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required and permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract. The Contractor further agrees to correct any defects in materials, workmanship, or installation of the Work which shall develop or be discovered within one (1) year after final acceptance of the Work.

11. **Indemnification/Hold Harmless.** The Contractor shall defend, indemnify and hold Owner, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of Owner. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and Owner, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

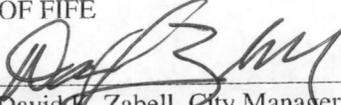
12. **Independent Contractor.** Contractor is and shall be at all times during the term of this Agreement an independent contractor.

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

14. **Attorneys Fees.** In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorneys fees from the other party.

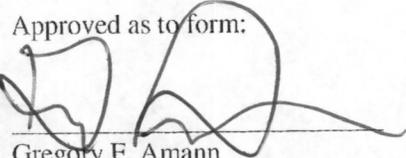
15. **Extent of Agreement/Modification.** This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

OWNER:  
CITY OF FIFE

By:   
David K. Zabell, City Manager

Date: 1/17/13

Approved as to form:

  
Gregory F. Amann  
Assistant City Attorney

CONTRACTOR:

By: STAR CONSTRUCTION  
Jack R. Euman

Name: JACK LESSMAN

Title: OWNER

Date: 1/8/13

**PERFORMANCE & PAYMENT BOND WITH GUARANTY**

Name of Project: **City Hall ADA Curb Ramp**

Contractor (Principal) \_\_\_\_\_

Project/Contract # \_\_\_\_\_

Surety \_\_\_\_\_

Bond Amount \$ \_\_\_\_\_

Bond # \_\_\_\_\_

1. Date and Parties

This performance and payment bond with guaranty is dated, for reference purposes only, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ and is executed by \_\_\_\_\_, as \_\_\_\_\_ Principal(s), and \_\_\_\_\_, as Surety.

2. General Recitals

A. Principal has entered into a public works contract (the "Contract") with the City of Fife for certain work described as follows:

**City Hall ADA Curb Ramp**

(the "Work").

B. This bond is furnished in accordance with RCW 39.08 to secure faithful performance of the Contract and payment of all persons covered under RCW 39.08.010.

3. Bond Amount

The Principal and the Surety agree and do jointly and severally bind themselves, their heirs, executors, administrators, and assigns, unto the City in the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_).

4. Agreement to Perform

A. Principal, his or its heirs, executors, administrators, successors, or assigns, shall abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract, and shall faithfully perform all the provisions of the Contract and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of the Contract that may hereafter be made, at the time and in the manner therein specified.

B. Principal shall pay all laborers, mechanics, and subcontractors and material suppliers, and all persons who shall supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such Work.

C. The Principal further agrees to correct any defects in materials, workmanship, or installation of the Work which shall develop or be discovered within one (1) year after final acceptance of the Work.

5. Indemnity Agreement

A. The Principal hereby agrees to indemnify and hold the City harmless from any and all claims that may be made against the City resulting directly or indirectly from any action or inaction of the Principal or his agents, employees or independent contractors relating directly or indirectly to work performed or to be performed under the terms of this agreement. This indemnity and hold harmless shall include City Costs related to defending against said claims, or in enforcing the terms of this agreement.

B. For purposes of this document, the term "City Costs" shall mean all City expenditures, obligations or debt incurred, including, but not limited to: construction, labor, equipment and material costs; City staff time; legal consultant fees; engineering consultant fees; financial consultant fees; publication, service or process and filing fees; mailing fees; cost of right-of way, real property and easement acquisition; and fees and costs to other governmental jurisdictions, that are made or incurred by the City, whether or not legal action is commenced.

6. Obligation of Surety

A. If the Principal (or any of the employees, subcontractors, or lower tier subcontractors of the Principal) fails to abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract, or fails to faithfully perform any of the provisions of the Contract or fails to well and truly perform and fulfill any of the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of the Contract that may hereafter be made, at the time and in the manner therein specified, then the Surety shall be liable to the City for City Costs resulting from said failure to perform, but not to exceed the Bond amount.

B. If the Principal (or any subcontractors or lower tier subcontractors of the Principal) fails to pay any laborers, mechanics, or subcontractors or material suppliers, and all persons who shall supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such Work, then the Surety shall be liable to the City for City Costs resulting from such failure to pay and to the persons covered by RCW 39.08.010, but not to exceed the Bond amount.

C. If the Principal fails to correct any defects in materials, workmanship, or installation of the Work which shall develop or be discovered within one (1) year after final acceptance of the Work, then the Surety shall be liable to the City for City Costs resulting from such failure, but not to exceed one tenth of the Bond amount.

D. The Surety agrees that no change, extension of time, alteration or addition to the terms of the contract or to the Work to be performed thereunder 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 tie, alterations or additions to the terms of the Contract or the Work or to the specifications.

E. The Surety 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 to the Principal shall automatically increase the obligation of the Surety on this Bond in a like amount. However, such increase shall not exceed twenty-five percent (25%) of the original amount of this Bond without the consent of the Surety.

7. Address for Notices

All notices required hereunder shall be considered properly delivered when personally delivered, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested, to:

Principal:

Surety:

JACK L. ESSMAN

Name

6613 92<sup>ND</sup> ST. C P G.

Street address

ROYALLOP, WA 98371

City, State and zip code

(253) 948-9811

Facsimile number

\_\_\_\_\_

Name

\_\_\_\_\_

Street address

\_\_\_\_\_

City, state and zip code

\_\_\_\_\_

Facsimile number

8. Default

A. If the Principal (or any of the employees, subcontractors, or lower tier subcontractors of the Principal) fails to faithfully, fully, and timely perform the Contract or any amendments thereto as required hereunder, or fails to pay any laborers, mechanics, or subcontractors or material suppliers, or any persons who shall supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such Work, then the City shall notify the Principal and the Surety that such failures must be cured to the satisfaction of the City Public Works Department within seven days from the date of the Notice, or such longer time as may be determined by the City Public Works Director. If the failures are not so cured and approved within the period stated in the notice then the Surety, upon written demand by the City, shall immediately tender to the City the full amount of the Bond (less any amount previously paid to claimants in accordance with RCW 39.08) and the City will complete the Work and/or make the payments, as the case may be, deduct from the amount tendered the City Costs, and refund the remainder, if any, to the Surety.

B. If the Principal fails to correct any defects in materials, workmanship, or installation of the Work, as required hereunder, then the City shall notify the Principal and Surety that the Work must be corrected to the satisfaction of the City Public Works Department within seven days from the date of the Notice, or such longer time as may be determined by the City Public Works Director. If the Work is not corrected and

approved within the period stated in the notice, then the Surety, upon written demand by the City, shall immediately tender to the City one tenth of the Bond amount (or the total amount remaining on the Bond whichever is less), and the City will correct the Work, and deduct from the amount tendered the City Costs. The City shall retain the remainder until the end of the warranty period. If at the end of the warranty period the tendered monies have not been expended for City Costs associated with correction of Work, then the remaining amount shall be refunded to the Surety.

C. If the amount of the Bond is inadequate to pay for City Costs, either because the City Costs exceed the Bond amounts or the Surety is no longer solvent or fails to timely tender the appropriate amount, then the City shall forthwith notify the Principal and he shall tender the deficiency to the City within five days of said notification. If the City commences legal action to collect said deficiency then the prevailing party in said legal action shall be entitled to judgment for their reasonable costs and attorney fees incurred therein. Each Principal is jointly and severally liable for the obligations set forth herein.

9. Action by Claimants.

A. All such persons mentioned in RCW 39.08.010 shall have a right of action in his, her, or their own name or names on the Bond for work done by such laborers or mechanics, and for materials furnished or provisions and goods supplied and furnished in the prosecution of the Work: PROVIDED, That such persons shall not have any right of action on this Bond for any sum whatever, unless within thirty days from and after the completion of the Contract with an acceptance of the Work by the City Council, the laborer, mechanic or subcontractor, or material supplier, or person claiming to have supplied materials, provisions or goods for the prosecution of such Work, shall present to and file with the City a notice in writing in accordance with RCW 39.08.030.

B. Every person, firm or corporation furnishing materials, supplies or provisions to be used in the construction, performance, carrying on, prosecution or doing of any of the Work, shall, not later than ten days after the date of the first delivery of such materials, supplies or provisions to any subcontractor or agent of any person, firm or corporation having a subcontract for the construction, performance, carrying on, prosecution or doing of such Work, deliver or mail to the Principal a notice in writing stating in substance and effect that such person, firm or corporation has commenced to deliver materials, supplies or provisions for use thereon, with the name of the subcontractor or agent ordering or to whom the same is furnished and that the Principal and the Bond will be held for the payment of the same, and no suit or action shall be maintained in any court against the Principal or this Bond to recover for such material, supplies or provisions or any part thereof unless the provisions of this section and RCW 39.08.065 have been complied with.

10. Modification.

This document cannot be modified, nor the obligations created hereunder terminated, without the City's express written consent.

11. Governing Law--Venue.

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

PRINCIPAL:

SURETY:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

PRINCIPAL:

\_\_\_\_\_

Accepted by the City this \_\_\_\_ day of

By: \_\_\_\_\_

\_\_\_\_\_, 20\_\_.

Title \_\_\_\_\_

By: \_\_\_\_\_

Title \_\_\_\_\_

***[Power of Attorney must be attached to Bond]***

**CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY**

**INSTRUCTIONS**

This certification is required pursuant to Executive Order 11246 (30 F. R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause: and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven calendar days after bid opening. No contract shall be awarded unless such report is submitted.

**CERTIFICATION BY:** Bidder  Contractor  Subcontractor

Name and Address of Bidder/Contractor/Subcontractor (include Zip Code):

STAR CONSTRUCTION  
5613 9<sup>th</sup> AVE ST. CT. E.  
PUYALLUP, WA. 98371

1. Bidder/Contractor/Subcontractor has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.  
(check one)  Yes  No
2. Compliance reports were required to be filed in connection with such contract or subcontract.  
(check one)  Yes  No
3. Bidder/Contractor/Subcontractor has filed all compliance reports due under applicable instructions, including SF-100.  
(check one)  Yes  No
4. Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended?  
(check one)  Yes  No

NAME AND TITLE OF SIGNER (Please print)

JACK L. ESSMAN OWNER STAR CONSTRUCTION

SIGNATURE:

*Jack L. Essman*

DATE:

11/8/13

**CONTRACTOR'S/SUBCONTRACTOR'S CERTIFICATION FORM: MBE/WBE PARTICIPATION**

Chapter 39, RCW (Substitute House Bill 1370) requires each bidder to identify at time of bid, all subcontractors performing more than 10 percent of project. To ensure that, Pierce County and the City of Fife require that all subcontractors and suppliers to be utilized on this project be identified at time of bid on the form below.

**M/WBE Participation:**

I, the official representative of (Bidder's name) STAR CONSTRUCTION do hereby acknowledge that the State of Washington has established voluntary participation goals for minority and women business enterprises for this project and certify that we will attempt to achieve the following MBE and WBE participation to meet those goals:

MBE Participation 10%

WBE Participation \*6.9%

\*Federally funded project must meet nationwide WBE goal of 6.9%, which is higher than the State WBE goal of 6%.

**List of Subcontractors and Suppliers**

Subcontractors, suppliers and manufacturers which we will utilize on this project include the following:

Firm Name/Address	Work/Supplies Provided	Contract Value \$	M/WBE Demographic Group	Sub/Sup/Mfr
CASCADE SAWING P.O. BOX 3157 KENT, WA 98099	SAW CUTTING	580 <sup>00</sup>	W <del>HW</del>	SUB

Contractor: STAR CONSTRUCTION Date: 11/8/13

By: Jack L. Essman  
JACK L. ESSMAN Title: OWNER

(typed or printed name)

**CONTRACTOR'S/SUBCONTRACTOR'S CERTIFICATION MBE/WBE PARTICIPATION  
FORM**

**Instructions for completing form:**

If more space is required, use additional pages.

Firm Name/Address; list full name and address of each firm which will be utilized as a subcontractor, supplier and/or manufacturer and further identify others that will be utilized to attempt to meet M/WBE goals.

Work/Supplies provided; list specific work to be accomplished or supplies to be furnished by each firm (subcontractor, supplier, and/or manufacturer).

Contract \$ Value; list the value of the contract for the work or supplies furnished by each to nearest dollar.

M/WBE Group; identify if firm is a minority or woman-owned business. Where a minority firm is listed, enter code showing the demographic code of that firm as follows.

**Demographic Codes:**

W = White

A = Asian

HL=Hispanic or Latino

2+ = Two or more races

B = Black/African American

AI =American Indian/Alaskan Native

NH = Native Hawaiian/Other Pacific Islander

FH = Female Head of Household

Enter code showing if the listed M/WBE firm is a contractor, subcontractor, supplier or manufacturer. (Examples: CONT = Contractor, MFR = Manufacturer, SUB = Subcontractor, SUP = Supplier).

**CONTRACTOR'S & SUBCONTRACTOR'S COMBINED CERTIFICATION**

(Required Information, MBE/WBE, EEO, Labor Standards, Debarment, Litigation/Regulatory Action)

State of Washington

County of Pierce

Contractor/Subcontractor: STAR CONSTRUCTION Date: 11/8/13

Address: 5613 92ND STREET E.  
PUYALLUP, WA 99371

Project Name: FIFE CITY HALL  
ADA CURB RAMP Number: 90132

The legal name of this firm is:

STAR CONSTRUCTION

This firm is (please check one):

a single proprietorship

a partnership

a corporation

other

The name, title and address of all owners, partners or officers of this firm are:

Name	Title	Address
JACK L. ESSMAN	OWNER	5613 92ND STREET E. PUYALLUP, WA 99371

The name, address and type of other construction business(es) in which this firm has a substantial interest:

Name	Address	Type of Business

The following information is correct:

IRS Identification No.: 91-1000692

Contractor's License No.: STAR CC\*230RL

CCR/Cage Code: 0510-00 0516-02

DUNS No.: 16-560-3119

Union Affiliation: Yes  No  Union(s): \_\_\_\_\_

Will Use Apprentices: Yes  No

The following person may sign payrolls for this firm:

\_\_\_\_\_

(sample signature)

*Jack L. Essman*

(printed or type name)

JACK L. ESSMAN

**This firm deducts from employee wages, benefits for authorized programs specified in attached Form 4010 Section A. 1. (i) Minimum Wages, as follows:**

Benefit	Agency To Whom Paid

**This firm deducts benefits from employee wages for programs which are not authorized under in attached Form 4010 Section A. 1. (i) Minimum Wages, (and which require approval):**

Benefit	Agency To Whom Paid

The undersigned, having executed a contract with the City of Fife (or with a Subrecipient, contractor or subcontractor of the City of Fife for the construction of the public works project described above, acknowledges that:

1. The MBE/WBE, EEO and Labor Standards provisions are included in the specifications of the contract and that the undersigned is obligated to comply with those requirements; and, that
2. The correction of any infraction of those requirements by the contractor, subcontractor, or any lower tier subcontractor is the responsibility of the prime contractor.

---

The undersigned further acknowledges and certifies that:

1. Neither he/she, nor any firm, partnership or association in which he/she has a substantial financial interest, is debarred from contracting with the federal government, the State of Washington or the City of Fife or is in any other way prevented from carrying out the provisions of this public works contract;
2. No part of this project has been or will be subcontracted to any subcontractor (or any tier) who is debarred from contracting with the federal government, the State of Washington or is in any other way prevented from carrying out the provisions of this public works contract; and
3. The undersigned certifies that (Check one):

It is, or

It is not

involved in any litigation or regulatory action at time of the bid. If they are, the bidder is required to provide applicable information including the parties involved, dates, places, courts, and a brief synopsis of the details attached to this form. Failure to provide this information, or failure to provide accurate information, may render the bid non-responsive or give the City of Fife the right to cancel the contract or apply other legal or administrative remedies.

4. He/she promises to forward to the City of Fife within 15 calendar days following execution, a copy of all subcontract agreements entered into on this project.

Contractor: STAR CONSTRUCTION Date: 11/8/13  
By: JACK R. ESSEMAN  
JACK L. ESSEMAN Title: OWNER

(typed or printed name)

Insert pertinent lawsuit/regulatory information here on company letterhead signed by the signing authority of the Contractor.

## CERTIFICATION OF NON-SEGREGATED FACILITIES

State of Washington

Pierce County

The construction contractor certifies further that he/she will not maintain or provide for his/her employees any segregated facilities at any of his establishments, and the he will not permit his/her to perform their services at any location, under his control, where segregated facilities are maintained. The construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract.

As used in this certification, the term "segregated facilities" means; any waiting rooms, work areas, rest rooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color or national origin, because of habit, local custom or otherwise.

The construction contractor agrees that (except where he/she has obtained identical certifications from proposed contractors for specific time periods) he/she will obtain identical certifications from proposed subcontractors prior to the award of subcontracts, and that he/she will retain such certification on file.

Contractor: STAR CONSTRUCTION

Date: 11/8/13

By: Jack L. Essman

(signature)

JACK L. ESSMAN

(typed or printed name)

**BIDDER/SUBCONTRACTOR SECTION 3 REPRESENTATION FORM**

BIDDER/  
SUBCONTRACTOR: STAR CONSTRUCTION

STREET ADDRESS: 5613 92<sup>ND</sup> STREET E.

TOWN/ZIP CODE: ROYALLOP, WA 99371

CONTACT PERSON: JACK L. ESSMAN

PHONE & FAX NO: (253) 841-3870 FAX 848-9811

**REPRESENTATION**

The BIDDER/SUBCONTRACTOR represents and certifies as a part of its bid that it is:

A SECTION 3 BUSINESS, which:

- is 51% or more owned by low-income Pierce County residents, or;
- has full time employees, 30% or more of whom are Pierce County residents who are low income OR qualified as low-income residents within three years of the date of current hire with the BIDDER/SUBCONTRACTOR, or;
- will award subcontracts in excess of 25% of the dollar amount of all subcontracts to the Section 3 businesses identified below:

**Proposed Section 3 Subcontractor**

**CONTRACT AMOUNT (\$)**

Proposed Section 3 Subcontractor	CONTRACT AMOUNT (\$)
_____	_____
_____	_____
_____	_____

*(Continue on separate sheet, if necessary.)*

**NOT A SECTION 3 BUSINESS**

After award of the bid, it will, if selected, complete a Section 3 Plan with the Pierce County Community Connections Department. The Section 3 Plan will detail how a minimum of 10% of new hires, as a result of work under this contract, shall be Section 3 residents. List below the estimated number of new hires by the BIDDER/SUBCONTRACTOR and named subcontractor(s):

Contractor	Est. Number of New Hires
BIDDER/PRIME <u>STAR CONSTRUCTION</u>	<u>0</u>
SUBCONTRACTOR _____	_____
SUBCONTRACTOR _____	_____
SUBCONTRACTOR _____	_____

*(continue on separate sheet, if necessary.)*

**PART II – PRESENT EMPLOYEES (for your entire organization):**

We presently employ 1 full-time employees, including:

- Minorities
- Women
- Lower-income Pierce County residents
- Otherwise qualified disabled individuals

We also presently employ 0 part-time employees, comprised of:

- Minorities
- Women
- Lower-income Pierce County residents
- Otherwise qualified disabled individuals

Further, during the period of this project we expect to provide training for 0 present employees including:

- Minorities

Women

Lower-income Pierce County residents

Otherwise qualified disabled individuals

During the period of this project we agree to treat all employees without unlawful prejudice or discrimination during all phases of their employment including all actions regarding employment, training, upgrading, promotion, demotion, job transfer, benefits, layoff or termination, pay, etc. Every effort should be made to train and promote women, minorities, Pierce County lower-income residents, and otherwise qualified disabled individuals to all levels of employment including management to counter the effects of any past discrimination to those classes of individuals.

**PART III – CONTRACTORS, SUBCONTRACTORS AND SUPPLIERS**

(For all physical improvement construction type projects only.)

During this period of performance, we expect to issue 1 contracts (subcontractors, supply contracts) of approximately \$ 580 value. Of that figure, we expect to issue contracts of the following approximate values:

Certified Women Business Enterprises WBE's)

Certified Minority Business Enterprises MBE's)

Lower-income Pierce County residents

Pierce County Businesses

We agree to make a "good faith effort" to utilize WBE's, MBE's and Pierce County Businesses as contractors, subcontractors and suppliers during the period of the project and to meet the State of Washington and U. S. Department of Labor M/WBE goals as follows:

Certified Women Business Enterprises (WBE's)

Certified Minority Business Enterprises (MBE's)

Pierce County Businesses – to greatest extent practicable

Each agency, organization, firm or individual hereby affirms that it will treat all employees; all contractors, subcontractors and suppliers; and all applicants for those positions without unlawful prejudice or discrimination, in all matters and that it will take affirmative action to counter the effects of past discrimination as set forth in this plan.

Agency: STAR CONSTRUCTIONS Date: 11/8/13

By: Jack L. Essman  
JACK L. ESSMAN

(typed or printed name)

NAME OF OWNER: JACK L. ESSMAN Date: 11/8/13

By: Jack L. Essman  
JACK L. ESSMAN

(typed or printed name)

**AFFIRMATIVE ACTION PROGRAM: FOR CONTRACTORS AND  
SUBCONTRACTORS - PLAN 1**

Contractor Name STAR CONSTRUCTION Contract 90132  
 Address 5613 92<sup>ND</sup> ST CT. E Date Awarded 11/8/13  
 City PUYALLUP State WA Contract Working Days 4  
 E.E.O. Officer JACK L. ESSMAN Location FIFE CITY HALL  
 Phone Number (253) 841-3870 Work Element GENERAL CONTRACT  
 SubContractor  Prime Contractor  Est. Start Date \_\_\_\_\_

**Contractor's Present Work Force (all employees, may attach additional pages if needed):**

Job Categories*	Total Employees	Total Minorities	# & Demographic Code (see below)	Women	Apprentice/ Trainee
GENERAL LABORER	1		W		
<b>Totals</b>	1	0		0	0

\*Use EEO-1 Job Categories. See U.S. Equal Employment Opportunity Commission web site at: [www.eeoc.gov](http://www.eeoc.gov)

Contractor's Projected Work Force – This Project (employees this project, may attach additional pages if needed):

Job Categories*	Total Employees	Total Minorities	# & Demographic Code (see below)	Women	Apprentice/ Trainee
GENERAL LABORER	1	.	W		
<b>Totals</b>	1	0		0	0

\*Use EEO-1 Job Categories. See U.S. Equal Employment Opportunity Commission web site at: [www.eeoc.gov](http://www.eeoc.gov)

**Demographic Codes:**

W = White

B = Black/African American

NH = Native Hawaiian/Other Pacific Islander

2+ = Two or more races

A = Asian

AI = American Indian/Alaskan Native

AI = American Indian/Alaskan Native

**Total New or Additional Employees Required:** 0

Contractor: Jack & Estmon

Date: 11/8/13

**AFFIRMATIVE ACTION PROGRAM: FOR CONTRACTORS AND  
SUBCONTRACTORS - PLAN D**

Project Name: FIFE CITY HALL ADA CURB RAMP

Organization Name: STAR CONSTRUCTION

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Subgrantee \_\_\_\_\_ Consultant \_\_\_\_\_

Prime Contractor STAR CONSTRUCTION Subcontractor \_\_\_\_\_

1. Each agency, organization, firm or individual receiving HUD Community Development Block Grant (CDBG) funds through the Pierce County is responsible:
  - a. To encourage participation of Women and Minority Business Enterprises, and Pierce County as contractors, subcontractors and suppliers on physical improvement projects;
  - b. To treat all employees and applicants for employment in a non-discriminatory manner;
  - c. To take affirmative action to counter the effects of past discrimination to women, minority and disabled employees; and
  - d. To encourage participation of Pierce County lower-income residents and otherwise qualified disabled individuals as employees and/or trainees.

Each organization, firm or individual receiving CDBG funds is required, as a condition of acceptance, to indicate the affirmative action it will take to meet these obligations as follows:

**PART I - NEW HIRE EMPLOYEES (for your *entire* organization):**

1. During the period of this project we expect to employ 0 new full-time employees. We expect that number of new employees to include:

Minorities

Women

Lower-income Pierce County residents

Otherwise qualified disabled individuals

2. In addition, during the period of this project, we expect to employ 0 trainees, comprised of:

Minorities

Women

Lower-income Pierce County residents

Otherwise qualified disabled individuals

3. Further, during the period of this project we expect to employ 0 part-time employees comprised of:

Minorities

Women

Lower-income Pierce County residents

Otherwise qualified disabled individuals

4. To attempt to encourage M/WBE participation to meet the State of Washington and U. S. Department of Labor M/WBE goals, and to actively recruit, solicit and encourage women, minorities, and lower-income Pierce County residents, and otherwise qualified disabled individuals to apply for all job openings.

5. We understand that no present full or part-time employees or trainees need be terminated or laid off in order to meet these goals; however, if additional employees or trainees are required we agree to make a "good faith effort" to encourage application of minorities, women, lower-income Pierce County

residents, and otherwise qualified disabled individuals to fill such openings. We will take the following affirmative actions whenever there is a need to hire new full or part-time employees.

- a. Recruit through local media, noting need for minorities, women, lower-income Pierce County residents, and/or otherwise qualified disabled individuals.
- b. Recruit through Washington State Employment Service, or, if a union employer, through appropriate unions, noting need for minorities, women, lower-income Pierce County residents, and otherwise qualified disabled individuals.
- c. Recruit through local community service organizations for minorities, women, lower-income Pierce County residents, and otherwise qualified disabled individuals.
- d. Maintain a reference list of minorities, women, Pierce County lower-income residents and otherwise qualified disabled individuals that visit the job site or your facilities and request employment.
- e. Treat all applicants for employment without unlawful prejudice or discrimination.
- f. Other (specify) \_\_\_\_\_.

**LIST OF ALL CURRENT EMPLOYEES**

Do not include Clerical Employees. Use additional pages if necessary

<b>Contractor/Sub:</b> STAR CONSTRUCTION		<b>Project:</b> CITY HALL CURB RAMP		
<b>Employee Name</b>	<b>Job Category</b>	<b>Address</b>	<b>Phone</b>	<b>Demographic Code</b>
RONALD D. FOSTER	GENERAL LABORER	19422 AURORA DR. E SPRING WAY, WA 98387	(253) 221-0598	W
<p>The contractor hereby certifies that: 1. <input type="checkbox"/>, it intends to hire additional employees; or 2. <input checked="" type="checkbox"/>, that it does NOT intend to hire additional employees to perform this project.</p> <p>Certified by: Name of Contractor <u>STAR CONSTRUCTION</u> Signature <u><i>Jack L. Essman</i></u></p>				

**PERFORMANCE & PAYMENT BOND WITH GUARANTY**

Name of Project: **City Hall ADA Curb Ramp**

Contractor (Principal) Jack L. Essman DBA: Star Construction Co

Project/Contract # 90132

Surety The Cincinnati Insurance Company

Bond Amount \$ 5,403.27

Bond # B-9115908

1. Date and Parties

This performance and payment bond with guaranty is dated, for reference purposes only, the 14th day of January, 2013 and is executed by Jack L. Essman DBA: Star Construction Co, as Principal(s), and The Cincinnati Insurance Company, as Surety.

2. General Recitals

A. Principal has entered into a public works contract (the "Contract") with the City of Fife for certain work described as follows:

**City Hall ADA Curb Ramp**

(the "Work").

B. This bond is furnished in accordance with RCW 39.08 to secure faithful performance of the Contract and payment of all persons covered under RCW 39.08.010.

3. Bond Amount

The Principal and the Surety agree and do jointly and severally bind themselves, their heirs, executors, administrators, and assigns, unto the City in the sum of Five Thousand Four Hundred Three and 27/100 dollars (\$ 5,403.27).

4. Agreement to Perform

A. Principal, his or its heirs, executors, administrators, successors, or assigns, shall abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract, and shall faithfully perform all the provisions of the Contract and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of the Contract that may hereafter be made, at the time and in the manner therein specified.

B. Principal shall pay all laborers, mechanics, and subcontractors and material suppliers, and all persons who shall supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such Work.

C. The Principal further agrees to correct any defects in materials, workmanship, or installation of the Work which shall develop or be discovered within one (1) year after final acceptance of the Work.

5. Indemnity Agreement

A. The Principal hereby agrees to indemnify and hold the City harmless from any and all claims that may be made against the City resulting directly or indirectly from any action or inaction of the Principal or his agents, employees or independent contractors relating directly or indirectly to work performed or to be performed under the terms of this agreement. This indemnity and hold harmless shall include City Costs related to defending against said claims, or in enforcing the terms of this agreement.

B. For purposes of this document, the term "City Costs" shall mean all City expenditures, obligations or debt incurred, including, but not limited to: construction, labor, equipment and material costs; City staff time; legal consultant fees; engineering consultant fees; financial consultant fees; publication, service or process and filing fees; mailing fees; cost of right-of way, real property and easement acquisition; and fees and costs to other governmental jurisdictions, that are made or incurred by the City, whether or not legal action is commenced.

6. Obligation of Surety

A. If the Principal (or any of the employees, subcontractors, or lower tier subcontractors of the Principal) fails to abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract, or fails to faithfully perform any of the provisions of the Contract or fails to well and truly perform and fulfill any of the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of the Contract that may hereafter be made, at the time and in the manner therein specified, then the Surety shall be liable to the City for City Costs resulting from said failure to perform, but not to exceed the Bond amount.

B. If the Principal (or any subcontractors or lower tier subcontractors of the Principal) fails to pay any laborers, mechanics, or subcontractors or material suppliers, and all persons who shall supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such Work, then the Surety shall be liable to the City for City Costs resulting from such failure to pay and to the persons covered by RCW 39.08.010, but not to exceed the Bond amount.

C. If the Principal fails to correct any defects in materials, workmanship, or installation of the Work which shall develop or be discovered within one (1) year after final acceptance of the Work, then the Surety shall be liable to the City for City Costs resulting from such failure, but not to exceed one tenth of the Bond amount.

D. The Surety agrees that no change, extension of time, alteration or addition to the terms of the contract or to the Work to be performed thereunder 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 tie, alterations or additions to the terms of the Contract or the Work or to the specifications.

E. The Surety 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 to the Principal shall automatically increase the obligation of the Surety on this Bond in a like amount. However, such increase shall not exceed twenty-five percent (25%) of the original amount of this Bond without the consent of the Surety.

7. Address for Notices

All notices required hereunder shall be considered properly delivered when personally delivered, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested, to:

Principal:

Jack L. Essman DBA: Star Construction Co  
Name  
5613 92nd St Court E  
Street address  
Puyallup, WA 98371  
City, State and zip code  
253-848-9811  
Facsimile number

Surety:

The Cincinnati Insurance Company  
Name  
6200 S. Gilmore Road  
Street address  
Fairfield, Ohio 45014-5141  
City, state and zip code  
  
Facsimile number

8. Default

A. If the Principal (or any of the employees, subcontractors, or lower tier subcontractors of the Principal) fails to faithfully, fully, and timely perform the Contract or any amendments thereto as required hereunder, or fails to pay any laborers, mechanics, or subcontractors or material suppliers, or any persons who shall supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such Work, then the City shall notify the Principal and the Surety that such failures must be cured to the satisfaction of the City Public Works Department within seven days from the date of the Notice, or such longer time as may be determined by the City Public Works Director. If the failures are not so cured and approved within the period stated in the notice then the Surety, upon written demand by the City, shall immediately tender to the City the full amount of the Bond (less any amount previously paid to claimants in accordance with RCW 39.08) and the City will complete the Work and/or make the payments, as the case may be, deduct from the amount tendered the City Costs, and refund the remainder, if any, to the Surety.

B. If the Principal fails to correct any defects in materials, workmanship, or installation of the Work, as required hereunder, then the City shall notify the Principal and Surety that the Work must be corrected to the satisfaction of the City Public Works Department within seven days from the date of the Notice, or such longer time as may be determined by the City Public Works Director. If the Work is not corrected and

approved within the period stated in the notice, then the Surety, upon written demand by the City, shall immediately tender to the City one tenth of the Bond amount (or the total amount remaining on the Bond whichever is less), and the City will correct the Work, and deduct from the amount tendered the City Costs. The City shall retain the remainder until the end of the warranty period. If at the end of the warranty period the tendered monies have not been expended for City Costs associated with correction of Work, then the remaining amount shall be refunded to the Surety.

C. If the amount of the Bond is inadequate to pay for City Costs, either because the City Costs exceed the Bond amounts or the Surety is no longer solvent or fails to timely tender the appropriate amount, then the City shall forthwith notify the Principal and he shall tender the deficiency to the City within five days of said notification. If the City commences legal action to collect said deficiency then the prevailing party in said legal action shall be entitled to judgment for their reasonable costs and attorney fees incurred therein. Each Principal is jointly and severally liable for the obligations set forth herein.

9. Action by Claimants.

A. All such persons mentioned in RCW 39.08.010 shall have a right of action in his, her, or their own name or names on the Bond for work done by such laborers or mechanics, and for materials furnished or provisions and goods supplied and furnished in the prosecution of the Work: PROVIDED, That such persons shall not have any right of action on this Bond for any sum whatever, unless within thirty days from and after the completion of the Contract with an acceptance of the Work by the City Council, the laborer, mechanic or subcontractor, or material supplier, or person claiming to have supplied materials, provisions or goods for the prosecution of such Work, shall present to and file with the City a notice in writing in accordance with RCW 39.08.030.

B. Every person, firm or corporation furnishing materials, supplies or provisions to be used in the construction, performance, carrying on, prosecution or doing of any of the Work, shall, not later than ten days after the date of the first delivery of such materials, supplies or provisions to any subcontractor or agent of any person, firm or corporation having a subcontract for the construction, performance, carrying on, prosecution or doing of such Work, deliver or mail to the Principal a notice in writing stating in substance and effect that such person, firm or corporation has commenced to deliver materials, supplies or provisions for use thereon, with the name of the subcontractor or agent ordering or to whom the same is furnished and that the Principal and the Bond will be held for the payment of the same, and no suit or action shall be maintained in any court against the Principal or this Bond to recover for such material, supplies or provisions or any part thereof unless the provisions of this section and RCW 39.08.065 have been complied with.

10. Modification.

This document cannot be modified, nor the obligations created hereunder terminated, without the City's express written consent.

11. Governing Law--Venue.

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

PRINCIPAL:

Jack L. Essman DBA: Star Construction Co \_\_\_\_\_

By: Jack L. Essman \_\_\_\_\_

Title Owner \_\_\_\_\_

SURETY:

The Cincinnati Insurance Company \_\_\_\_\_

By: Jennifer D. Lutz \_\_\_\_\_

Title Jennifer D. Lutz, Attorney-in-Fact \_\_\_\_\_

PRINCIPAL:

\_\_\_\_\_

By: \_\_\_\_\_

Title \_\_\_\_\_

Accepted by the City this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_

Title \_\_\_\_\_

*Approved as to form:*

[Signature] *Assistant City Attorney*

**[Power of Attorney must be attached to Bond]**



THE CINCINNATI INSURANCE COMPANY

Fairfield, Ohio

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That THE CINCINNATI INSURANCE COMPANY, a corporation organized under the laws of the State of Ohio, and having its principal office in the City of Fairfield, Ohio, does hereby constitute and appoint

Toby Hawkins, Sandra Marinelli, Karen L Padilla, Joshua C Wright, Jennifer D Lutz, James G Hunt, Curtis M Olsen, Andrew R Hoven,

of Renton, WA its true and lawful Attorney(s)-in-Fact to sign, execute, seal and deliver on its behalf as Surety, and as its act and deed, any and all bonds, policies, undertakings, or other like instruments, as follows:

Any such obligations in the United States,
Thirty Million Dollars and 00/100 (\$30,000,000.00)

This appointment is made under and by authority of the following resolution passed by the Board of Directors of said Company at a meeting held in the principal office of the Company, a quorum being present and voting, on the 6th day of December, 1958, which resolution is still in effect:

RESOLVED, that the President or any Vice President be hereby authorized, and empowered to appoint Attorneys-in-Fact of the Company to execute any and all bonds, policies, undertakings, or other like instruments on behalf of the Corporation, and may authorize any officer or any such Attorney-in-Fact to affix the corporate seal; and may with or without cause modify or revoke any such appointment or authority. Any such writings so executed by such Attorneys-in-Fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company at a meeting duly called and held on the 7th day of December, 1973.

RESOLVED, that the signature of the President or a Vice President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Secretary or Assistant Secretary and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power of certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certified by certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS WHEREOF, THE CINCINNATI INSURANCE COMPANY has caused these presents to be sealed with its corporate seal, duly attested by its Vice President this 1st day of April, 2007.



STATE OF OHIO ) ss:
COUNTY OF BUTLER )

THE CINCINNATI INSURANCE COMPANY

Handwritten signature of Thomas H. Kelly

Vice President

On this 1st day of April, 2007, before me came the above-named Vice President of THE CINCINNATI INSURANCE COMPANY, to me personally known to be the officer described herein, and acknowledged that the seal affixed to the preceding instrument is the corporate seal of said Company and the corporate seal and the signature of the officer were duly affixed and subscribed to said instrument by the authority and direction of said corporation.



Handwritten signature of Mark J. Huller

MARK J. HULLER, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date. Section 147.03 O.R.C.

I, the undersigned Secretary or Assistant Secretary of THE CINCINNATI INSURANCE COMPANY, hereby certify that the above is a true and correct copy of the Original Power of Attorney issued by said Company, and do hereby further certify that the said Power of Attorney is still in full force and effect.

GIVEN under my hand and seal of said Company at Fairfield, Ohio.
this 14th day of January, 2013



Handwritten signature of Gregory J. Schlemmer

Secretary