


CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: February 14, 2022

AGENDA ITEM:	
Contract Awards – Comeford Park and Restroom	
PREPARED BY:	DIRECTOR APPROVAL:
Adam Benton	
DEPARTMENT:	
Public Works - Engineering	
ATTACHMENTS:	
Certified Bid Tab, Vicinity Map, Public Works Contract	
BUDGET CODE:	AMOUNT:
31000076.563000, P2103	\$1,740,345.81
SUMMARY:	

The Comeford Park and Restroom project will include the construction of a new restroom, a new connection to the Delta Plaza, new event seating adjacent to the Delta Plaza, enhanced circulation, new concrete walkways, new lighting, new landscaping and associated utilities.

The project was advertised for a February 9, 2022 bid opening. The City received 6 bids as shown on the attached bid tabulation. The low bidder was Moon Construction Company, Inc. at \$1,657,472.20. The engineer’s estimate is \$1,503,328.60. References have been checked and found to be satisfactory.

Contract Bid (Including Sales Tax 9.3%):	\$1,657,472.20
<u>Management Reserve:</u>	<u>\$82,873.61</u>
Total:	\$1,740,345.81

RECOMMENDED MOTION:
 I move to authorize the Mayor to sign and execute the Comeford Park and Restroom project contract with Moon Construction Company, Inc. in the amount of \$1,657,472.20, and approve a management reserve of \$82,873.61, for a total allocation of \$1,740,345.81.



Comeford Park and Restroom Certified Bid Tab

Certified Bid Tab

2/9/2022

31000076.563000.P2103 COMEFORD PARK AND RESTROOM

Schdule A				Engineer's Estimate		SRV Construction, Inc.		Tiger Construction, LTD.		Colacurcio Bothers, Inc.		
Section	Item	Description	Quantity	Units	Unit Prices	Total Price	Unit Prices	Total Price	Unit Prices	Total Price	Unit Prices	Total Price
1-04.4	1	MINOR CHANGES	FA	1.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00
	2	COMPLETE CONSTRUCTION OF COMEFORD PARK AND RESTROOM PROJECT	LS	1.00	\$1,280,415.00	\$1,280,415.00	\$1,900,285.00	\$1,900,285.00	\$1,499,000.00	\$1,499,000.00	\$1,470,000.00	\$1,470,000.00
	3	IRRIGATION SYSTEM	FA	1.00	\$30,000.00	\$30,000.00	\$30,000.00	\$30,000.00	\$30,000.00	\$30,000.00	\$30,000.00	\$30,000.00
	4	GRASSCRETE PAVING	LS	1.00	\$40,000.00	\$40,000.00	\$39,000.00	\$39,000.00	\$70,000.00	\$70,000.00	\$84,500.00	\$84,500.00
		Sales Tax @ 9.3%				\$127,913.60		\$185,468.51		\$151,032.00		\$149,683.50
						\$1,503,328.60		\$2,179,753.51		\$1,775,032.00		\$1,759,183.50

Apparent Low Bid

Schdule A				Engineer's Estimate		Bayshore Construction Co, LLC		Moon Construction Co, Inc.		Wyser Construction Co, Inc.		
Section	Item	Description	Quantity	Units	Unit Prices	Total Price	Unit Prices	Total Price	Unit Prices	Total Price	Unit Prices	Total Price
1-04.4	1	MINOR CHANGES	FA	1.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00
	2	COMPLETE CONSTRUCTION OF COMEFORD PARK AND RESTROOM PROJECT	LS	1.00	\$1,280,415.00	\$1,280,415.00	\$1,536,288.00	\$1,536,288.00	\$1,425,297.00	\$1,425,297.00	\$1,790,000.00	\$1,790,000.00
	3	IRRIGATION SYSTEM	FA	1.00	\$30,000.00	\$30,000.00	\$30,000.00	\$30,000.00	\$30,000.00	\$30,000.00	\$30,000.00	\$30,000.00
	4	GRASSCRETE PAVING	LS	1.00	\$40,000.00	\$40,000.00	\$22,000.00	\$22,000.00	\$36,146.00	\$36,146.00	\$19,500.00	\$19,500.00
		Sales Tax @ 9.3%				\$127,913.60		\$150,035.78		\$141,029.20		\$173,398.50
						\$1,503,328.60		\$1,763,323.78		\$1,657,472.20		\$2,037,898.50





PART 3 - CONTRACT DOCUMENTS

PUBLIC WORKS CONTRACT

THIS PUBLIC WORKS CONTRACT (the “Contract”) is made and entered into as of the date of the last signature below, by and between the City of Marysville, a Washington State municipal corporation (the “City”) and Moon Construction Company, Inc. (Contractor), a Corporation, organized under the laws of the State of Washington, located and doing business at 19624 76th Avenue W, Suite B, Lynnwood, WA 98036 (the “Contractor”).

WITNESSETH:

Whereas, the City desires to have certain public work performed as hereinafter set forth, requiring specialized skills and other supportive capabilities; and

Whereas, the Contractor represents that it is qualified and possesses sufficient skills and the necessary capabilities to perform the services set forth in this Contract.

NOW, THEREFORE, in consideration of the terms, conditions, and agreements contained herein, the parties hereto agree as follows:

- I. SCOPE OF WORK.** The Contractor agrees to do all work and furnish all labor, tools, materials, equipment, and supplies required to build and construct and to build and construct in a workmanlike manner the work, improvements, and appurtenances in order to accomplish the following project:

COMEFORD PARK AND RESTROOM P2103

All such work, labor, tools, materials, equipment, and supplies to be procured and furnished in accordance with the following documents (the “Contract Documents”) which are incorporated by reference and are hereby made a part of this Contract:

- A. This Contract;
- B. The Call for Bids, Information for Bidders, and Bidder’s Checklist;
- C. 2022 Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction as modified by all amendments thereto as of the date of the Contractor’s bid;
- D. Special Provisions
- E. Plans, Drawings, Project and Technical Specifications;
- F. Addenda (if any)
- G. Contractor's Proposal/Bid
- H. Payment Bond and Performance Bond; and
- I. All provisions required by law whether set forth and reproduced herein or not.

and shall perform any alterations in or additions to the work provided under this Contract and every part thereof.

The Contractor shall provide and bear the expense of all equipment, work, and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in this Contract, except as may otherwise be provided in the Contract Documents.

The Contractor shall guarantee said materials and work for a period of one year after completion of this Contract.

- II. TIME FOR COMPLETION & LIQUIDATED DAMAGES.** Substantial completion shall be achieved within 70 working days of the effective date of the Notice to Proceed. If said work is not completed within the time specified, the Contractor agrees to pay the City liquidated damages as provided in Section 1-08.9 of the Standard Specifications.

- III. COMPENSATION AND METHOD OF PAYMENT.** The lump sum/total itemized amount of the Contract is One Million Six Hundred Fifty Seven Thousand Four Hundred Seventy Two Dollars and Twenty Cents (\$1,657,472.20) including Washington State Sales Tax. The total Project cost includes all costs associated with the Project work, including, but not limited to labor, materials, overhead, and administrative, permit, and regulatory costs, unless otherwise agreed in writing. The Project cost is based on the proposal/bid submitted by the Contractor dated February 9, 2022. The basis for final payment will be the actual amount of work performed according to the Contract Documents and payments, whether partial or final, shall be made as specified therein.

- IV. ATTORNEY FEES.** Should either the City or the Contractor commence any legal action relating to the provisions of this Contract, or the enforcement thereof, the prevailing party shall be awarded judgment for all costs of litigation including, but not limited to, costs, expert witnesses and reasonable attorney fees.

- V. INDEMNIFICATION.** In addition to any other obligations contained in the Contract Documents,
 - A. The Contractor shall defend, indemnify and hold the City, 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 Contract, except for injuries and damages caused by the sole negligence of the City.

 - B. Should a court of competent jurisdiction determine that this Contract 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 the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

- C. The Contractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW, as provided in RCW 4.24.115. The indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disability benefits acts, or other employee benefits acts; provided the Contractor’s waiver of immunity by the provisions of this paragraph extends only to claims against the Contractor by the City and does not include, or extend to, any claims by the Contractor’s employees directly against Contractor. The obligations of Contractor under this subsection have been mutually negotiated by the parties hereto, and Contractor acknowledges that the City would not enter into this Contract without the waiver thereof of Contractor.
_____ (City initials) _____ (Contractor initials)
- D. 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.

VI. CONTRACT ADMINISTRATION.

This Contract shall be administered _____ (Contractor Representative) on behalf of the Contractor and by Nick Greene (City Representative) on behalf of the City. Any written notices required by the terms of this Contract shall be served or mailed to the following addresses:

<u>Contractor:</u> Moon Construction Company, Inc. Jeff Moon 19624 76 th Avenue W, Suite B Lynnwood, WA 98036	<u>City:</u> City of Marysville Public Works – Attn: Nick Greene 80 Columbia Ave Marysville, WA 98270
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VII. PREVAILING WAGES. The Contractor shall comply with all state and federal laws relating to the employment of labor and wage rates to be paid.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

DATED this _____ day of _____, 2022.

CITY OF MARYSVILLE

By: _____
Jon Nehring, Mayor

DATED this _____ day of _____, 2022.

MOON CONSTRUCTION COMPANY, INC.
(CONTRACTOR)

By: _____
Clifford Moon
Its: President

Attested/Authenticated:

_____, Deputy City Clerk

Approved as to form:

Jon Walker, City Attorney

**PERFORMANCE BOND
to City of Marysville, WA**

Bond No. _____

The City of Marysville, Washington (the "City"), has awarded to _____ (the "Principal"), a contract for the construction of the project designated as COMEFORD PARK AND RESTROOM, Project No. P2103, in Marysville, Washington (the "Contract"), and said Principal is required to furnish a bond for performance of all obligations under the Contract.

The Principal, and _____ (the "Surety"), a corporation organized under the laws of the State of _____ and licensed to do business in the State of Washington as surety and 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 Dept., are jointly and severally held and firmly bound to the City in the sum of _____ U.S. Dollars (\$_____) Total Contract Amount, subject to the provisions herein.

This statutory performance bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall well and faithfully perform all of the Principal's obligations under the Contract and fulfill all terms and conditions of all duly authorized modifications, additions, and changes to said Contract that may hereafter be made, at the time and in the manner specified; and if such performance obligations have not been fulfilled, this bond shall remain in full force and effect.

The Surety for value received agrees that no change, extension of time, alteration, or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way, affect its obligation on this bond, and waives notice of any change, extension of time, alteration, or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to the Surety is not required for such increased obligation.

This bond may be executed in two (2) original counterparts and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the office executing on behalf of the Surety.

Principal

Surety

Principal Signature Date

Surety Signature Date

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Name, address, and telephone number of local office/agent of Surety is:

PAYMENT BOND
to City of Marysville, WA

Bond No. _____

The City of Marysville, Washington (the "City"), has awarded to _____ (the "Principal"), a contract for the construction of the project designated as COMEFORD PARK AND RESTROOM, Project No. P2103, in Marysville, Washington (the "Contract"), and said Principal is required under the terms of that Contract to furnish a payment bond in accordance with Title 39.08 Revised Code of Washington (RCW) and (where applicable) 60.28 RCW.

The Principal, and _____ (the "Surety"), a corporation organized under the laws of the State of _____ and licensed to do business in the State of Washington as surety and 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 Dept., are jointly and severally held and firmly bound to the City in the sum of _____ U.S. Dollars (\$_____) Total Contract Amount, subject to the provisions herein.

This statutory payment bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall pay all persons in accordance with RCW Titles 39.08, 39.12, and 60.28, including all workers, laborers, mechanics, subcontractors, and material suppliers, and all persons who shall supply such contractor or subcontractor with provisions and supplies for the carrying on of such work; and shall pay the taxes, fees, and penalties incurred on the project; and if such payment obligations have not been fulfilled, this bond shall remain in full force and effect.

The Surety for value received agrees that no change, extension of time, alteration, or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way, affect its obligation on this bond, and waives notice of any change, extension of time, alteration, or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to the Surety is not required for such increased obligation.

This bond may be executed in two (2) original counterparts and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the office executing on behalf of the Surety.

Principal

Surety

Principal Signature Date

Surety Signature Date

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Name, address, and telephone number of local office/agent of Surety is:

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**CONTRACTOR'S DECLARATION OF OPTION FOR MANAGEMENT OF
STATUTORY RETAINED PERCENTAGE**

Monies reserved under provisions of Chapter 60.28 RCW, at the option of the Contractor, shall be:

Select one:

- (1) Retained in a fund by the City.** No interest will be earned on the retained percentage amount under this election.

- (2) Deposited in an Interest-Bearing Account.** Deposited by the City in an interest-bearing account in a bank, mutual savings bank, or savings and loan association. Funds may not be withdrawn until sixty (60) days after the completion date of the work and must be in accordance with Chapters 60.28 and 39.12 RCW. Interest on such account will be paid to the Contractor. Fees incurred shall be the responsibility of the Contractor.

If this option is selected, the Contractor must complete the attached "Assignment of Savings or Time Deposit Escrow Retained Percentage Holding Account" form.

- (3) Placed in an Escrow Account Chosen by Contractor.** Placed in escrow with a bank or trust company by the City. When the monies reserved are to be placed in escrow, the City will issue a check representing the sum of the monies reserved payable to the bank or trust company and the Contractor jointly. Such check shall be converted into bonds and securities chosen by the Contractor and approved by the City and the bonds and securities held in escrow. The Contractor is solely responsible for all costs which may accrue from escrow services, brokerage costs, or both, and assumes all risks in connection with the investment of the retained percentages in securities.

If this option is selected, the Contractor must complete two copies of the attached "Retainage Escrow Agreement" form.

- (4) Bond in Lieu of Retainage.** In lieu of the City withholding retainage, the Contractor will submit a Retainage Bond which must be effective until sixty (60) days following the completion date of the work and in accordance with Chapters 60.28 and 39.12 RCW.

If this option is selected, the Contractor must complete the attached "Retainage Bond" form.

Contractor

Contractor's Signature

Printed Name: _____

Title: _____

Date: _____

**Assignment of Savings or Time Deposit Escrow
Retained Percentage Holding Account**

The undersigned _____
hereby referenced to as "Contractor" has directed CITY OF MARYSVILLE herein referred to as
"Agency" to deliver its warrants or checks payable to
_____, herein after the "Bank" and the Contractor jointly.
Such warrants or checks shall be deposited to Account # _____ as an Escrow
Retained Percentage Holding Account.

All deposits to the account shall not be subject to withdrawal until the Bank is notified by the
Agency, in writing, authorizing the release of such funds. All interest earned on this account shall
be paid to the Contractor. Any costs or fees incurred as a result of placing the said retained
percentage funds in this account shall be paid by the Contractor.

Contractor

Agency: City of Marysville

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Date: _____

Date: _____

Bank

Signature: _____

Name: _____

Title: _____

Address: _____

Phone: _____

Date: _____



Project	COMEFORD PARK AND RESTROOM
Contractor	
Bank	

The Undersigned, _____, hereinafter referred to as the Contractor, and the City of Marysville, hereinafter referred to as the City, have entered into a public works construction contract.

Under the terms of the Contract, and pursuant to Chapter 60.28. RCW, the Contractor and the Public Body have agreed to deposit any and all retainage from the Contract into an interest bearing depository account (the “Retainage Account”) with _____ (the “Bank”), subject to the following instructions:

RETAINAGE ESCROW AGREEMENT AND INSTRUCTIONS

1. **Escrow Agreement.** The Contractor on a public improvement project for the City exercised its option pursuant to RCW 60.28.011 (1994) to place Retainage in escrow with the Bank. This Agreement constitutes both the escrow agreement between the City and Contractor and instructions to the Bank for handling of the Escrow Account. This Agreement is not effective until (a) the Agreement has been signed by the Contractor, Bank and City and (b) Contractor, Bank and City have entered the appropriate information in Exhibit A.

2. **Check Issuance, Endorsement, and Deposit.** From time to time, the City will issue a Check payable to the Bank and Contractor jointly. Contractor expressly authorizes and grants the power to the Bank to endorse the check on its behalf, to negotiate the check, collect the funds represented by the Check, and to deposit the funds so collected into the Escrow Account. These powers shall be deemed to be powers coupled with an interest and shall be irrevocable during the term of this escrow.

3. **Investment of Funds.** Funds and cash balances in the Escrow Account may be invested in Eligible Securities at the direction of the Contractor. For purchase of Eligible Securities, the Bank may follow the last written direction it received from the Contractor, provided such direction provides for investment in Eligible Securities. The Bank shall not invest any funds, cash balances, or proceeds of sale of Eligible Securities in any securities, bonds or accounts that are not Eligible Securities. Eligible Securities purchased pursuant to this Agreement shall be held by the Bank as custodian as part of this escrow. Eligible Securities shall be held in the Bank’s name. Interest on the purchased Eligible Securities, if any, shall be paid to Contractor when, as and if any accrued interest is received by the Bank.

4. **Eligible Securities.** The following securities are deemed Eligible Securities, and the Bank may invest funds and cash balances in such securities at the direction of Contractor without further approval of the City, provided that any maturity dates are no later than twenty-five (25) calendar

days after the Completion Date and provided they are held in a manner and form that allows Bank alone to liquidate the securities as provided for in the Agreement.

- A. Bills, certificates, notes or bonds of the United States;
- B. Other obligations of the United States or its agencies;
- C. Obligations of any corporation wholly owned by the Government of the United States;
- D. Indebtedness of the Federal National Mortgage Association;
- E. Time deposits in commercial banks; and
- F. Mutual funds, pools, or investment trusts, provided the investments of the fund, pool or trust consists solely of securities listed in herein.

Other securities may be deemed Eligible Securities upon the written request of the Contractor and written approval of the City, provided the City has the staff assistance and expertise which will permit it to exercise sound judgment in assessing the security. The City shall consider probable safety, risk to principal, liquidity and any other factor the City deems reasonable to consider. Nothing herein obligates the City to incur any expense or charge to assess the appropriateness of a proposed security. The City has no obligation to consider a proposed security if the City would incur expenses, charges or fees in its assessment of the appropriateness of the security as an investment. If the proposed security has a maturity date, the security must mature on or before the Completion Date. The Contractor expressly acknowledges that any investment in securities involves risks, including, but not limited to, the risks of loss or diminution of principal and failure to realize anticipated or expected appreciation, dividends, interest, or other gain. Contractor expressly waives and releases both City and Bank from any and all liability associated with, or arising out of, these and all market risks.

5. Bank Duties and Responsibilities. Although the Bank will be a joint payee of any Check, the Bank shall only have (a) those duties and responsibilities that a depository bank would have pursuant to Article 4 of the Uniform Commercial Code of the State of Washington for an item deposited to Bank and (b) those duties and responsibilities created by this Agreement. The Bank must not deliver to the Contractor all or any part of the securities or money held by the Bank pursuant to this Agreement (or any proceeds from the sale of such securities, or the negotiation of the City's warrants or checks) except in accordance with written instructions from the City. The City Clerk is authorized to give written instructions and the Finance Director or Treasurer (or its designee) is authorized to give written approval of securities. Written instructions and written approval of securities must be countersigned by the City Attorney. The City may designate different authorized persons from time to time by notifying the Bank in writing of the change, which notice must be countersigned by the City Attorney.

6. Change of Completion Date. Upon written request by the Bank, City shall advise the Bank in writing of any change in the Completion Date. If the changed Completion Date is later than the original Completion Date, the Bank may reinvest any funds on hand, cash balances or proceeds

of Eligible Securities with maturities, reverse loads, etc. consistent with the later Completion Date. If the changed Completion Date is earlier than the original Completion Date, the Bank shall execute such transactions as are commercially reasonable to liquidate Eligible Securities in the Escrow Account no later than twenty-five (25) calendar days after the earlier Completion Date.

7. Return of Funds to City. At the City's sole option and notwithstanding any other provision of this Agreement, the City may direct the Bank in writing to liquidate any and all Eligible Securities held in or for the Escrow Account and to deliver all funds, cash, accrued interest and proceeds in the Escrow Account to the City. Such liquidation shall occur within thirty-five (35) calendar days of receipt of the written direction.

8. Compensation of Bank. Contractor shall be solely responsible for, and shall pay separately to the Bank, any and all fees, charges, or commissions of the Bank relating to the Escrow Account. No fees, charges or commissions of any kind may be deducted by the Bank from any property, funds, proceeds or Eligible Securities in the Escrow Account until and unless the City directs the release of the Escrow Account to the Contractor, in which case the Bank is hereby granted a lien upon the property, proceeds or Eligible Securities in the Escrow Account for the entire amount of unpaid Bank fees, costs or charges arising out of or relating to the Escrow Account. Said lien arises and is effective upon the City's written direction to release the Escrow Account to the Contractor. The City shall not be liable for any fees, charges, expenses or commissions relating to the Escrow Account or any Eligible Securities.

9. Termination of Escrow By Bank. Bank may terminate the escrow by giving written notice to the City and Contractor. Within twenty (20) calendar days of the receipt of such notice, the City and Contractor shall jointly appoint a successor escrow holder and instruct Bank to deliver all securities and funds of the Escrow Account to said successor. If Bank is not so notified of the appointment of a successor escrow holder, Bank may return all funds, securities and contents of the Escrow Account to the City.

10. Definitions

"*Agreement*" shall mean this document, including Exhibit A when completely executed by the City, Contractor and Bank.

"*Bank*" shall mean that national or state chartered bank identified in Exhibit A that holds the escrow.

"*Check*" shall mean a check or warrant payable jointly to the Bank and Contractor, representing accrued Retainage.

"*City*" shall mean the City of Marysville, a municipal corporation of the State of Washington.

"*Completion Date*" shall mean that date occurring immediately after the expiration of the project duration (as defined by the contract for the public improvement), including any agreed extensions thereof. The initial Completion Date can be found in Exhibit A.

"*Contractor*" shall mean the undersigned contractor.

"*Escrow Account*" shall mean the escrow created by this Agreement.

“Eligible Securities” are those bonds and securities identified in the paragraph 4 above.

“Retainage” shall mean moneys reserved by the City under the provisions of a public improvement contract.

11. Miscellaneous.

A. With the possible exception of any agreement between the Bank and Contractor regarding amount and payment of fees, commissions and charges related to the Escrow Account, this document contains the entire agreement between the Bank, Contractor and the City with respect to this Escrow Account.

B. This Agreement binds the assigns, successors, personal representatives and heirs of the parties hereto. Those persons executing this Agreement represent and warrant they are duly authorized to bind their principals to this Agreement and to execute this Agreement on their behalf.

C. Venue for any dispute arising out of, or related to, this Agreement shall be Snohomish County, Washington.

D. This Agreement shall be executed in triplicate, each of which shall be deemed to be an original.

<p>AGREED AND ACCEPTED this the ___ day of _____, 2022.</p> <p>_____</p> <p>CONTRACTOR</p> <p>By: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>Address: _____</p> <p>City: _____</p> <p>State: _____ Zip: _____</p> <p>Tax ID #: _____</p>	<p>AGREED AND ACCEPTED this the ___ day of _____, 2022.</p> <p>CITY OF MARYSVILLE</p> <p>By: _____</p> <p>Jon Nehring, Mayor</p> <p>ATTEST:</p> <p>By: _____</p> <p>_____, Deputy City Clerk</p>
<p>AGREED AND ACCEPTED this the ___ day of _____, 2022.</p> <p>_____</p> <p>BANK</p> <p>By: _____</p> <p>Printed name: _____</p> <p>Its: _____</p>	<p>APPROVED AS TO FORM:</p> <p>By: _____</p> <p>Jon Walker, City Attorney</p>

EXHIBIT A

City Supplied Information. The City provides the following information:

Project	COMEFORD PARK AND RESTROOM PROJECT
	P2103 Work Order # (if applicable)
Contractor	
Bank	
Completion Date	

Bank Supplied Information. Bank provides the following information:

Bank	Name	
	Branch	
	Address/Phone	
	Contact Person/Account Officer	
Escrow Account	Account Name	
	Bank Account #	

Contractor Supplied Information. Contractor provides the following information:

Contractor	Name	
	Address/Phone	
	Representative Authorized to Direct Investment	

RETAINAGE BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS, that _____ (Contractor), a corporation organized under the laws of the State of _____, and registered to do business in the State of Washington as a contractor, as Principal, and _____ (Surety), a corporation organized under the laws of the State of _____ and registered to transact business in the in the State of Washington as surety, as Surety, their heirs, executors, administrators, successors, and assigns, are jointly and severally held and bound to the City of Marysville, Washington, hereinafter called "City", and are similarly held and bound unto the beneficiaries of the trust fund created by RCW Chapter 60.28, in the sum of _____ and ___/100's Dollars (\$ _____), or five percent (5%) of all monies now or hereafter earned by the Principal in connection with the below-referenced Contract, the payment of which, well and truly to be paid, we bind ourselves, our heirs, executors and successors, jointly and severally, formally by these presents.

THE CONDITIONS OF THE ABOVE OBLIGATION ARE THAT:

WHEREAS, on _____, 20____, the Principal executed a contract (the "Contract") with the City known as:

Project Name: COMEFORD PARK AND RESTROOM PROJECT

Contract Number: P2103

And,

WHEREAS, said Contract and RCW Chapter 60.28 require the City to withhold from the Principal the sum of five percent (5%) from monies earned by the Principal during the progress of the construction, hereinafter referred to as "earned retained funds"; and

WHEREAS, the Principal has requested that the City accept a retainage bond and release earned retained funds to the Principal, as allowed under RCW Chapter. 60.28;

NOW, THEREFORE, the condition of this obligation is such that the Surety is held and bound to the City to indemnify, defend, and hold the City harmless from any and all loss, costs or damages that the City may sustain by reason of release of said earned retained funds to Principal, then this obligation to be null and void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, it is expressly understood and agreed that:

1. Any suit or action under this bond must be instituted within the time period provided by applicable law. The bond shall be subject to all claims and liens provided for by law or Contract against the earned retained funds and in the same manner and priority as set forth for retained percentages in RCW Ch. 60.28 and the Contract.
2. The Surety hereby consents to and waives notice of any extension in the time for performance of the Contract, assignment of obligations under the Contract, or Contract alteration, termination, amendment or change order. This expressly includes, but is not limited to, consent to and waiver of any notice with respect to increases in the Contract price by change

order. Upon any such Contract price increase, the amount of this bond automatically increases by an amount equal to five percent (5%) of the Contract price increase.

3. Until written release of this obligation by the City, this bond may not be terminated or canceled by the Principal or Surety for any reason. Any extension of time for the Principal’s performance on the Contract, assignment of obligations under the Contract, or Contract alteration, amendment or change order shall not release the Surety from its obligation under this bond.

4. RCW Ch. 60.28 authorizes the City to substitute a retainage bond in lieu of earned retained funds and the Surety hereby waives any defense that this bond is void or otherwise not authorized by law.

5. Any claim or suit against the City to foreclose the liens provided for by RCW Chapter 60.28 shall be effective against the Principal and Surety and any judgment under RCW Chapter. 60.28 against the City shall be conclusive against the Principal and the Surety.

6. The laws of the State of Washington shall apply to the determination of the rights and obligations of the parties hereunder. Venue for any dispute or claim hereunder shall be the state courts of Washington in Snohomish County, Washington.

The City Attorney may, in his or her discretion, waive conditions of the bond as appropriate.

The bond must be duly executed by the contractor and a surety that is (1) authorized to do business as a surety in the State of Washington and (2) rated at least “A” or better and with a numerical rating of no less than seven (7) by A.M. Best Company. The bond must be accompanied by a fully executed Power of Attorney appointing the signer for the surety as the surety’s attorney-in-fact.

Principal	Surety
_____	_____
Principal Signature Date	Surety Signature Date
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____

ACCEPTED
CITY OF MARYSVILLE

By _____
Jon Nehring, Mayor

Date: _____

Approved as to Form

By _____
Jon Walker, City Attorney

Date: _____