



**Spokane Transit**  
How a great city moves.

**SPOKANE TRANSIT AUTHORITY  
1230 W. BOONE AVENUE  
SPOKANE, WA 99201**

**INVITATION FOR BID # 13-STA-472**

**FOR: Spokane Community College (SCC)  
Interim Transit Center Improvements**

**ISSUE DATE: June 17, 2013**

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## **ADVERTISEMENT FOR BIDS**

Sealed bid proposals are requested for the following Project:

Project No.: 13-STA-472  
Project Title: Spokane Community College (SCC) Interim Transit Center Improvements  
Agency: Spokane Transit Authority  
1230 West Boone Avenue  
Spokane, Washington 99201-2686

Project Manager: Jessica Charlton  
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Project Description: The project generally consists of demolition of existing concrete and glass block transit shelters and repair of concrete island, removal of curb and sidewalk for installation of new ADA compliant ramp and sidewalk, installation of additional lighting, removal of existing asphalt pavement and replacement with new asphalt pavement capable of supporting transit bus traffic loading.

**PRE-BID MEETING:** **3:00 p.m. local time, on Wednesday June 26, 2013** at Spokane Community College (Owner), located at 1810 N. Greene St. in Spokane, WA. Meeting to be held on site in west parking lot off Greene Street. All prospective bidders are strongly encouraged to attend.

**PUBLIC BID OPENING:** **3:00 p.m. local time, Wednesday July 10, 2013.** Deliver no later than 3:00pm to the reception desk located in the STA Maintenance Facility on the south side of Boone Avenue at 1229 W. Boone Ave, Spokane, WA 99201. Bid opening will follow in a meeting room to be determined.

Availability of Bid Documents: Contractors may obtain electronic copies of plans and specifications from the Project Manager as stated above. Plans and specifications may also be viewed at the following plan centers: Associated Builders and Contractors, Associated General Contractors, and Spokane Regional Plan Center.

The minimum prevailing wage provisions for Washington State law or Federal Davis Bacon, whichever is greater, as well as federal wage provisions apply to this project including but not limited to certified payroll submittal. Use of DBE/MBE/WBE/MWBE contractors and suppliers is encouraged by not mandatory. Contractors submitting bids may contact the Washington State Office of Minority and Women's Business Enterprise to obtain information on certified firms.

The Agency reserves the right to reject or accept any or all bid proposals and to waive minor informalities in the bidding process. No contractor submitting bids may withdraw their bids after hour set for opening thereof unless contract award is delayed for a period exceeding ninety (90) days.

Spokane Transit Authority is an Equal Employment Opportunity (EEO) organization which does not discriminate against any prospective supplier on the basis of race, religion, color, sex, age, national origin, or presence of any sensory, mental, or physical disability in the consideration for contract award. The successful bidder will be required to comply with all EEO federal, state, and local laws and regulations.

STA's facilities are accessible for people who use wheelchairs. Other necessary accommodations or alternative formats regarding this information will be produced for people with disabilities. Please call 325-6094 (TTY WA Relay 711) or email [smillbank@spokanetransit.com](mailto:smillbank@spokanetransit.com) at least forty-eight (48) hours in advance to request an accommodation.

## **STA INSTRUCTIONS TO CONTRACTORS SUBMITTING BIDS**

### **DEFINITIONS**

- A. **Addenda** are written or graphic instruments, approved and issued by the Owner prior to the time designated for Opening of Bids, which amend, modify or interpret the Bidding Documents by additions, deletions, clarifications, or corrections.
- B. **An Alternate Bid (or Alternate)** is the amount stated in the Bid to be added or deducted from the amount of the Base Bid if the corresponding change in project scope or materials or methods of construction described in the Bidding Documents is accepted.
- C. **A Bid** is the submission of a complete and properly signed authorized solicitation form (Bid Proposal Form) together with Bid Bond, if applicable, and the certifications and representations required to comply with the Invitation for Bid.
- D. **Base Bid** is the sum stated in the Bid for which the Bidder offers to perform the work described as the Base, to which work may be added or deducted from sums stated in Alternate Bids (if any).
- E. **Bidder** is one who submits a Bid for a prime contract with the Owner for the Work described in the Construction Documents.
- F. **A Non-responsive Bid** is any Bid which fails to conform in all respects to the material requirements of the Bidding Documents or imposes conditions which would modify requirements of the Bidding Documents or would limit a bidder's liability to the Spokane Transit Authority so as to give the bidder an advantage over the Bidders as determined by the Spokane Transit Authority.
- G. **Responsible Bidder** means a contractor who meets the criteria listed in RCW 39.04.350.
- H. **Unit Price** is an amount stated in the Bid as a price per unit of measurement or materials or services as described in the Construction documents as defined in the General Conditions of the Contract between STA, as Owner, and the Contractor.

# **STA INSTRUCTIONS TO CONTRACTORS SUBMITTING BIDS**

## **PART 1 - General**

### **1.1 EXPLANATION TO PROSPECTIVE CONTRACTORS SUBMITTING BIDS**

- A. Any prospective contractor submitting bids desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must submit a request in writing to the Architect/Engineer (A/E) seven (7) calendar days before the bid due date. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective contractor submitting bids concerning a solicitation will be furnished promptly to all other prospective contractors submitting bids by addendum to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective contractors submitting bids.
- B. STA is committed to ensuring that all forms regardless of race, color, sex or national origin have equal opportunity to participate in STA contracts. Therefore, STA has established an annual agency goal for Disadvantaged Business Enterprise (DBE) participation in its contracting opportunities. In accordance with the legislative findings and policies set forth in Chapter 39.19 RCW STA encourages participation in all of its contracts by Minority Business Enterprises (MBE), Women Owned Business Enterprise (WBE), and Minority Women Owned Business Enterprise (MWBE) firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this invitation or as a subcontractor to a contractor submitting bids. However, unless required by federal statutes, regulations, grants, or contract terms referenced in the contract documents, no preference will be included in the evaluation of bids, no minimum level of DBE/MBE/WBE/MWBE participation shall be required as a condition for receiving an award, and bids will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply.
- C. On applicable projects the bid advertisement and Bid Proposal form shall establish a minimum required percentage of apprentice labor hours compared to the total labor hours. Contractors submitting bids may contact the Department of Labor and Industries, Specialty Compliance Services Division, Apprenticeship Section, P.O. Box 44530, Olympia, WA 98504-4530, by phone (360) 902-5320, and e-mail at [thum235@lni.wa.gov](mailto:thum235@lni.wa.gov), to obtain information on available apprenticeship programs.
- D. In addition to the payment and performance bond required by work law the Contractor shall purchase and maintain in a company or companies lawfully authorized and admitted to do business in the State of Washington possessing a Best's policyholder's rating of A- or better and a financial rating of no less than VII, and reasonably acceptable to STA, an occurrence-based Commercial General Liability Insurance Policy which shall provide bodily injury and property damage liability on its own operations and vehicles on Work the Contractor may subcontract or sublet to others, in no less than the amounts specified in Part 2 of the attached STA General Conditions.
- E. The general description and scope of work for the project can be found on page 13 of this document.

### **1.2 PREPARATION OF BIDS – CONSTRUCTION**

- A. Bids must be: (1) submitted on the bid proposal forms, or copies of forms, furnished by the Owner or the Owner's agent, and (2) signed in ink. The person signing a bid must initial each change appearing on any bid form. If the bid is made by a corporation, it shall be signed by the corporation's authorized designee. The address of the contractor submitting bids shall be typed or printed on the bid form in the space provided.

- B. The bid form may require contractors submitting bids to submit bid prices for one or more items on various bases, including: (1) lump sum base bid; (2) lump sum bid alternate prices; (3) unit prices; or (4) any combination of items 1 through 3 above.
- C. If the solicitation includes alternate bid items, failure to provide a bid on the alternates may disqualify the bid. If quoting on all items is not required, contractors submitting bids should insert the words “no bid” in the space provided for any item on which no price is submitted.
- D. Substitute bid proposals will not be considered unless this solicitation authorizes their submission.
- E. This project is federally funded therefore the Contractor must read and consider all federal clauses and requirements in the bid. By submitting a bid proposal the Contractor acknowledges that it accepts terms, conditions, and requirements of federally funded projects.

### 1.3 BID GUARANTEE

- A. When the sum of the base bid plus all additive bid alternates is \$35,000.00 or less, bid security is not required. When the sum of the base bid plus all additive alternates is greater than \$35,000.00, a bid guarantee in the amount of 5% of the base bid amount is required. Failure of the contractor submitting bids to provide bid guarantee when required shall render the bid non-responsive.
- B. Acceptable forms of bid guarantee are: A bid bond or postal money order, or certified check or cashier’s check made payable to Spokane Transit Authority. The Owner will return bid guarantees (other than bid bond) to unsuccessful contractors submitting bids as soon as practicable, but not sooner than the execution of a contract with the successful contractor submitting bids. The bid guarantee of the successful contractor submitting bids will be returned to the successful contractor submitting bids with its official notice to proceed with the work of the contract.
- C. The contractor submitting bids will allow 90 days from bid opening date for acceptance of its bid by the Owner. The successful contractor will return to the Owner a signed contract, insurance certificate and bond or bond waiver within 15 days after receipt of the contract. If the apparent successful contractor submitting bids fails to sign all contractual documents or provide the bond and insurance as required or return the documents within 15 days after receipt of the contract, the Owner may terminate the award of the contract.
- D. In the event a contractor submitting bids discovers an error in its bid following the bid opening, the contractor submitting bids may request to withdraw its bid under the following conditions:
  1. Written notification is received by the Owner within 24 hours following bid opening.
  2. The contractor submitting bids provides written documentation of the claimed error to the satisfaction of the Owner within 72 hours following the bid opening.

The Owner will approve or disapprove the request for withdrawal of the bid in writing. If the contractor’s request for withdrawal of its bid is approved, the contractor submitting bids will be released from further obligation to the Owner without penalty. If it is disapproved, the Owner may retain the contractor’s bid guarantee.

### 1.4 ADDITIVE OR DEDUCTIVE BID ITEMS

- A. The low contractor submitting bids, for purposes of award, shall be the responsive contractor submitting bids offering the low aggregate amount for the base bid item, plus additive or deductive bid alternates selected by the Owner, and within funds available for the project.

- B. The contractor submitting bids agrees to hold all bid alternate prices for ninety (90) days from date of bid opening.

#### 1.5 ACKNOWLEDGEMENT OF ADDENDA

- A. Contractors submitting bids shall acknowledge receipt of all addenda to this solicitation by identifying the addenda numbers in the space provided for this purpose on the bid proposal form. Failure to do so may result in the bid being declared non-responsive.

#### 1.6 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

- A. The contractor submitting bids acknowledges that it has taken steps necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and road; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during the work. The contractor submitting bids also acknowledges that it has satisfied itself as to character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including exploratory work done by the Owner, as well as from the drawings and specifications made a part of this contract. Any failure of the contractor submitting bids to take the actions described and acknowledged in this paragraph will not relieve the contractor submitting bids from responsibility for estimating properly the difficulty and cost of successfully performing the work.
- B. If Bidder is unable to attend the scheduled Pre-Bid meeting, please contact STA to arrange a separate site visit. **Bids submitted by contractors that have not either attended a pre-bid meeting or inspected the site in the presence of STA staff will be considered non-responsive.**

#### 1.7 TIME OF COMPLETION

- A. Work may begin when the Contractor receives a formal "Notice to Proceed." Contractor shall proceed with promptness and dispatch and shall complete the project within forty (40) calendar days beginning on the day of commencement as stated in a Notice to Proceed.

#### 1.8 LIQUIDATED DAMAGES

- A. The Contractor agrees to pay to STA liquidated damages in the amount of \$100.00 for each day the Contractor fails to provide services or respond to an STA request for services hereinafter provided. These liquidated damages are for the purpose of any delay or impact caused to STA by virtue of the Contractor's acts or omissions and do not cover any other actual or consequential damages other than delay. STA and the Contractor agree that such damage cannot be reasonably determined at this time. Such damages are very difficult to accurately estimate because of numerous factors, including, but not limited to inconvenience to STA. Further, the parties agree this is a reasonable forecast of all factors now known and available for consideration relating to the delay caused by failure to perform. Liquidated damages shall be deducted from the contract by change order.

#### 1.9 WAGE RATE SCHEDULES

- A. The Scope of Work for this project constitutes a public work under state law and therefore the Contractor shall pay the highest prevailing wage rate by trade or occupation of either the federal labor rate schedules or as specified by the State of Washington, Department of Labor and Industries. The Federal labor rate schedules and Prevailing Wage rates for the State of Washington are current at the time of submission and are available through websites provided on page 31. It is the responsibility of the prospective bidder to verify these publications are current at the time of bidding
  - 1. Certified Payrolls for the prime and all subcontractors must accompany all applications for payment.

2. An approved Intent to Pay Prevailing wage form must be received by STA for the contractor and any subcontractors prior to commencement of any work. The approved Intent must also be posed at the job site.

- B. Any disputes as to wage rates will be referred to the US Secretary of Labor and the Director of Labor and Industries for the State of Washington who will determine the prevailing local wage rate for the trade in dispute.

#### 1.10 TAXES – RULE 171

- A. The Contractor shall pay all taxes, including sales tax, for the work or portions thereof provided by the Contractor and these taxes shall be included in the Contract amount.

State of Washington sales tax is payable on the “selling price” or gross proceeds of sale” of the “tangible personal property” as these terms are defined in WAC 458-20-107 (Rule 107) except as excluded by WAC 458-20-171 (Rule 171)

This project qualifies as “public road construction” as described in Rule 171, WAC 458-20-171, and therefore only material used or consumed by Contractor will be subject to Washington State sales tax. The Contractors charges for labor, profit, overhead, etc., to STA are not subject to retail sales tax.

The bid amounts shall include Washington State Sales Tax (WSST). All other taxes imposed by law shall be included in the bid amount. The Owner will include WSST in progress payments. The contractor shall pay the WSST to the Department of Revenue and shall furnish proof of payment to the Owner if requested.

Contractors are advised that they are considered the end consumers of all material, including prefabricated and pre-cast items, equipment and supplies used or consumed by them in performing the work, and must pay any applicable retail sales tax/use tax to their material men and suppliers. In order to maximize the sales tax exemption. Contractors are encouraged to have all material delivered to the job site for consumption. Work performed away from the job site should be minimized in order to maximize the sales tax exemption. If the Contractor has questions about the application of Rule 171, the Contractor is advised to contact the Department of Revenue.

The Contract Amount must include labor, overhead, profit and applicable sales tax on materials, pursuant to Washington State Department of Revenue Rule 171. Contractors are cautioned against paying sales tax more than once on materials used or consumed, such as by paying sales tax to material men or suppliers, and again remitting sales tax to the state on total costs.

All applicable taxes which the Contractors are required to pay, including retail sales/use tax as specified above, shall be included by them in their proposed prices for the work under their proposal. No adjustment will be made in the amount to be paid by STA under the contract because of any misunderstanding by or lack of knowledge of the bidder/contractor as to their liability for, or the amount of any taxes or because of any increases in tax rates imposed by any federal, state or local government.

- B. NOTE: Contractor must bond for total contract amount.

#### 1.11 BID AMOUNTS

- A. The bid prices shown for each item on the bid proposal shall include all labor, material, sales tax as described in paragraph 1.10, equipment, overhead and compensation, as well as municipal permits and fees to complete all of the work for that item.

- B. The actual cost of building permit (only) and the public utility hookup fees will be a direct reimbursement to the Contractor or paid directly to the permitting agency by the Owner. Fees for these permits should not be included by the Contractor submitting bids in the bid amount.

- C. The Contractor submitting bids agrees to hold the base bid prices for ninety (90) days from date of bid opening.

#### 1.12 SUBMISSION OF BIDS

- A. Bid Proposals must be submitted on or before the time specified in the Advertisement for Bids or as extended in Bid Documents.
- B. If the base bid and the sum of the additive alternates is one million dollars or more, the Bid Proposal shall comply with the following requirements:
  - 1. Pursuant to RCW 39.30.060, if the base bid and the sum of the additive alternates is one million dollars or more, the Contractor submitting bids shall provide names of the Subcontractors with whom the Contractor submitting bids will subcontract for performance of heating, ventilation and air conditioning (HVAC), plumbing, and electrical.
  - 2. The Contractor submitting bids can name itself for the performance of the work.
  - 3. The Contractor submitting bids shall not list more than one Subcontractor for each category of work identified UNLESS Subcontractors vary with bid alternates, in which case the Contractor submitting bids must indicate which Subcontractor will be used for which alternate.
  - 4. Failure of the Contractor submitting bids to submit as part of the bid the NAMES of such Subcontractors or to name itself to perform such work shall render the contractor's bid nonresponsive and, therefore, void.
- C. The Bid Proposal shall be submitted in a sealed envelope addressed to the office specified in the Advertisement for Bids. Oral, telephonic, electronic, for facsimile bids are invalid and will not receive consideration. The envelope shall have printed on the outside:
  - 1. The project number and description.
  - 2. The name and address of the contractor submitting bids.
  - 3. Identification as Bid Proposal.
- D. Bids will be accepted no later than 3:00 pm at the reception desk located in STA's Maintenance Facility, on the south side of Boone Avenue located at 1229 W. Boone Ave, in Spokane, Washington. The Owner's representative will designate the official bid clock fifteen (15) minutes prior to bid due time; bid opening will immediately follow in meeting room within the facility. Any part of the bid proposal or bid modification not received prior to the times specified, per the designated bid clock, will not be considered and the bid will be returned to the contractor unopened.
- E. A bid may be withdrawn in person by the authorized representative of the contractor submitting bids before the opening of the bids. The representative of the contractor submitting bids will be required to show ID and sign on bid summary sheet before it will be released.
- F. People with disabilities who wish to request special accommodation, (e.g., sign language interpreters, Braille, etc.) need to contact the Owner forty-eight (48) hours prior to the scheduled bid opening.

#### 1.13 CONSIDERATION OF BIDS

- A. Spokane Transit Authority shall have the right to reject any or all bids and to reject bids considered non-responsive including but not limited to Bids not accompanied by any required bid security, certifications, or data required by the Bidding Documents or a Bid not signed by the authorized legal representative.
- B. The Owner shall have the right to waive any informality or irregularity in any Bid received.
- C. In the event that a single bid is received, Spokane Transit will conduct a cost/price analysis of the bid. This analysis will compare the price and quality of the proposed equipment with that involved in recent similar purchases with similar specifications made by this or other governmental agencies in an attempt to determine the competitive integrity of the submitted bid.

#### 1.14 BID RESULTS

- A. After the Bid Opening, Contractors submitting bids may obtain bid results from the Owner. Bid results may also be obtained from the A/E.

## 1.15 LOW RESPONSIBLE

- A. **Mandatory Responsibility Criteria:** Before award of a public works contract, a contractor submitting bids must meet the following mandatory responsibility criteria under RCW 39.04.350 (1) to be considered a responsible contractor submitting bids and qualified to be awarded a public works project. The contractor submitting bids must:
1. At the time of bid submittal, have a certificate of registration of contractor in compliance with Chapter 18.27 RCW;
  2. Have a current state unified business identifier number;
  3. If applicable, have industrial insurance coverage for the employees of the contractor submitting bids working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW;
  4. Not be disqualified from quoting on any public works contract under RCW 39.06.010 or 39.12.065(3); and
  5. If quoting on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation.
  6. Until December 31, 2013, not have violated the “Off-site Prefabrication” reporting requirement more than one time as determined by the Department of Labor and Industries.
- B. **Supplemental Responsibility Criteria:** In addition to the mandatory contractor submitting bids responsibility, the Owner may adopt relevant supplemental criteria for determining contractor submitting bids responsibility applicable to a particular project which the contractor submitting bids must meet (RCW 39.04.350 (2)).
1. If applicable, the Owner shall consider an overall accounting of the attached responsibility and supplemental responsibility criteria for determining contractor submitting bids responsibility.
  2. At least seven (7) days prior to the bid submittal deadline, a potential contractor submitting bids may request that the Owner modify the supplemental responsibility criteria. The Owner will evaluate the information submitted by the potential contractor submitting bids and respond before the bid submittal deadline. If the evaluation results in a change of the criteria, the Owner will issue an addendum to the quoting documents identifying the new criteria.
  3. Upon Owner’s request, the apparent low contractor submitting bids must supply the requested responsibility information within two (2) business days of request by Owner. Withholding information or failure to submit all the information requested within the time provided may render the bid non-responsive.
  4. Upon request of the Owner, a Bidder whose proposal is under consideration for award of Contract shall submit promptly satisfactory evidence of his/her financial resources, experience, organization, and equipment available for performance of the Contract on AIA Form A305 “contractor’s Qualification Statement” or similar form approved by the Owner.
  5. If the Owner determines that the apparent low contractor submitting bids is not responsible, the Owner will notify the contractor submitting bids of its preliminary determination in writing.
  6. Within three (3) days after receipt of the preliminary determination, the contractor submitting bids may withdraw its bid or request a hearing where the contractor submitting bids may appeal the preliminary determination and present additional information to the Owner.
  7. The Owner will schedule a hearing within three (3) working days of receipt of the contractor’s request. The hearing members will include a STA Executive or designee, and Project Manager.
  8. The Owner will issue a Final Determination after reviewing information presented at the hearing.

9. If the Owner determines a contractor submitting bids to be not responsible, the Owner will provide, in writing, the reasons for the determination. If the final determination affirms that the contractor submitting bids is not responsible, the Owner will not execute a contract with any other contractor submitting bids until two (2) business days after the contractor submitting bids determined to be not responsible has received the final determination.
10. The Owner's Final Determination is specific to this project, and will have no effect on other or future projects.

C. Reporting Off-Site, Prefabricated, Non-Standard, Project Specific Items

1. For contracts entered into between September 1, 2010 and December 31, 2013, all "Off-Site Prefabricated Non-Standard Project Specific Items" shall be identified for projects valued at one million dollars or more. "Off-site, prefabricated, nonstandard, project specific items" means products or items that are:
  - a. Made primarily of architectural or structural precast concrete, fabricated steel, pipe and pipe systems, or sheet metal and sheet metal duct work;
  - b. Produced specifically for the public work and not considered to be regularly available shelf items;
  - c. Produced or manufactured by labor expended to assemble or modify standard items;
  - d. Produced at an off-site location outside of Washington.
2. The Contractor or Subcontractor(s) contracting for "Off-Site Prefabricated Non-Standard Project Specific Items" shall comply with the Department of Labor and Industries reporting requirements and instructions on the affidavit of wages paid form. The information to be provided to the Department of Labor and Industries shall include:
  - a. The estimated cost of the public works project;
  - b. The name of the awarding agency and the project title;
  - c. The contract value of the off-site, prefabricated, nonstandard, project specific items produced outside Washington, including labor and materials;
  - d. The name, address and federal employer identification number of the contractor that produced the off-site, prefabricated, nonstandard, project specific items.
3. The Contractor or Subcontractor directly contracting for the off-site prefabricated items must submit this information as part of the affidavit of wages paid form filed with the Department of Labor and Industries. Contractors found to be out of compliance with the Department of Labor and Industries may be rejected as non-responsible.
4. The Owner may direct the Contractor, at no additional cost to the Owner, to remove and substitute any Subcontractor(s) found to be out of compliance with the "Off-Site Prefabricated Non-Standard Project Specific Items" reporting requirements more than one time as determined by the Department of Labor and Industries.

1.16 CONTRACT AWARD

- A. The Owner will evaluate bids responsiveness and responsibility.
  1. A bid will be considered responsive if it meets the following requirements:
    - a. It is received at the proper time and place.
    - b. It meets the stated requirements of the bid proposal.
    - c. It is accompanied by a bid guarantee, if required.
  2. A bid will be considered responsible if it meets the following requirements:

- a. It is submitted by a licensed/registered contractor within the state of Washington at the time of bid opening and is not banned from quoting by the Department of Labor and Industries.
  - b. It meets the mandatory responsibility criteria established in RCW 39.04.350 for Prime and Subs and an overall accounting of the supplemental responsibility criteria established for the project.
- B. The Owner reserves the right to accept or reject any or all bid proposals and to waive informalities.
- C. The Owner may negotiate bid price adjustments with the low responsive contractor submitting bids, including changes in the contract documents, to bring the bid within the available funding per RCW 39.04.015.
- D. The apparent low contractor submitting bids, for purpose of award, shall be the responsive and responsible contractor submitting bids offering the low aggregate amount for the base bid plus selected additive or deductive bid alternates and meeting all other bid submittal requirements.
- E. The Contract will only become effective when signed by the Owner. Prior to the Owner's signature, any and all costs incurred shall be the sole responsibility of the contractor submitting bids.
- F. The Contractor must purchase and maintain insurance coverage as stated in Part 2 of Spokane Transit Authority's Public Works Construction Project General Conditions.
- G. Note: AIA Payment Bond and Performance Bond forms (A312) are required. These forms will not be provided by the Owner.

#### 1.17 CONTRACT DOCUMENTS

- A. The Contract Documents under which it is proposed to execute this work consists of all material bound herein, plus any addenda incorporated into the documents.
- B. These Contract Documents are intended to be mutually cooperative and to provide all details reasonably required for the execution of the proposed work. Any person contemplating the submission of a proposal shall have thoroughly examined all of the various parts of these documents, and should there be any doubt as to the meaning or intent of said Contract Documents, the Bidder should request the Architect/Engineer, in writing (at least six (6) working days prior to bid opening), and interpretation thereof. Any interpretation or change in said Contract Documents will be made only in writing, in the form of addenda to the documents and will be furnished to all Bidders receiving a set of documents, who shall indicate receipt of same in the space provided on the proposal form. The Owner will not be responsible for any other explanation or interpretation of said documents.

#### 1.18 DISCREPANCIES & CONTRACT DOCUMENT REVIEWED

- A. The intent of Spokane Transit Authority and Federal Funded Project Contract Documents is to describe a complete Project. These Contract Documents are complimentary. What is required by one part of the Contract Documents shall be binding as if required by all.
- B. In the event of a discrepancy between Spokane Transit Authority and Federal Funded Project Contract Documents, the Contractor will use the Contract Document that imparts the highest cost to their bid and/or longest delay in their schedule. It is the responsibility of the Contractor to bring these discrepancies to the attention of the Engineer as soon as they are discovered.

#### 1.19 PROTEST PROCEDURES

- A. STA maintains a set of protest procedures. If any bidder desires this information, it may be obtained by calling the Office of the Purchasing Manager, Jacqueline Tjards at (509) 325-6032.

## **PROJECT DESCRIPTION**

Improvements to Spokane Transit Authority's existing transit center at Spokane Community College (Owner) will increase the ability to add capacity for ridership needs. Improvements generally include, however are not limited to, the removal of existing concrete and glass block shelters such that they may be replaced with new modular shelters, installing additional lighting, repairing the concrete walk in the areas of demolished shelters, creating a new ADA compliant ramp at the south end of the transit center, improving the asphalt pavement section on the west side of the island to support transit bus traffic loading, as well as painting delineation and typical pedestrian crossing markings associated with the transit center.

Project Located at: Spokane Community College (SCC), 1810 N. Greene St. in Spokane, WA

## **SCOPE OF WORK**

The work shall generally consist of:

1. Obtain and pay for all required fees and permitting.
2. Demolition of existing concrete and glass block transit shelters, former ADA ramp at south end of transit island, and asphalt paving on west side of island as shown on the project plans.
3. Installation of new lighting.
4. Prepare and install new ADA compliant ramp and sidewalk at south end of Transit Island.
5. Repair and replace concrete surface in areas of demolished shelters, infill small ramp at mid island, and create new concrete curb and sidewalk at north end of improvements as shown on the project plans.
6. Construct new asphalt drive lane and passing lane for support of transit bus traffic.
7. Install new square posts for bus zone locations and re-install bus stop sign
8. Record location of new bus stop posts using GPS coordinates.
9. Paint crossing bars, curbs and bus zone delineator markings as per plan.
10. Replace any concrete curb and sidewalk, asphalt pavement, pavement and curb markings, landscaping, and/or irrigation systems disturbed as a result of construction activity.
11. All work to be completed as shown and specified on the associated plan sheets.

All work shall meet/exceed all codes, utility locating, rules and regulations, as set forth by the City, County and State of Washington.

Contractor is responsible for the supply of all equipment necessary to complete the project.

Contractor shall perform work in accordance with the Washington State Department of Labor and Industries Safety Standards.

Contractor shall be responsible for any and all damage and cleanup costs. Contractor negligence shall be repaired immediately at no cost to STA.

All work will be subject to inspection and acceptance by STA's project manager or designee and SCC designee to prior payment.

STA reserves the right to increase or decrease the amount of related services listed in the scope of work for a fairly negotiated price.

## BID SUBMITTAL FORMS

### BID CHECKLIST- SCC Interim Transit Center Improvements 13-STA-472

To be ***included with*** Bid Proposal Form when you submit your Bid. Failure of the contractor submitting a bid to submit these forms with the bid shall render the bid non-responsive and shall be grounds for rejection of said bid.

**Check off each of the following as completed, and included with this proposal:**

- STA Bid Submittal Checklist - Statement of Compliance signed and dated below.
- STA Bid Proposal Forms: Submitted on appropriate form, filled out legibly and completely.
- STA Bid Response Forms: Submitted on appropriate form, filled out legibly and completely.
- STA Responsibility Criteria: Submit filled out legibly and completely.
- FTA Buy American Certificate: Submit filled out legibly and completely.
- FTA Lobbying Certificate: Submit filled out legibly and completely.
- FTA DBE Participation List: Submit filled out legibly and completely.
- FTA Debarment & Suspension Certificate: Submit filled out legibly and completely.
- Bid Security attached in the Amount of 5% of Total bid (Base Bid including applicable WSST), see instructions to contractors.
- Work Plan: The Contractor submitting a bid must provide the following required information with the bid form. Failure to submit such information to the satisfaction of the Owner may render the bid non-responsive.

The Contractor's work plan is to include with description the following minimum elements:

- a. Installation of safety barriers and traffic control plans
- b. Phasing
- c. Final cleanup
- d. Final closeout

- Bid is submitted in a sealed opaque envelope, identified with the following:

Project Name: STA – SCC Interim Transit Center Improvements

Project Number: 13-STA-472

Contractor's Name:

Contractor's Address:

NOTE: If mailed, enclose sealed bid in a separate mailing envelope with the notation "Sealed Bid Enclosed".

### STATEMENT OF COMPLIANCE

The undersigned has reviewed, read and fully understands these Bid Documents and this checklist, fully complies therein, and certifies that all required elements, as marked herein and contained within the specification are included in this Bid Proposal.

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**BID PROPOSAL FORMS**

TO: SPOKANE TRANSIT  
PLANNING DEPARTMENT  
1230 West Boone Avenue  
Spokane, Washington 99201-2686

**RE: SCC Interim Transit Center Improvements Project No. 13-STA-472**

NAME OF FIRM SUBMITTING BID: \_\_\_\_\_

Each bid shall constitute an offer to STA as outlined herein and no bidder may withdraw his bid after the hour set for the bid opening thereof except under the conditions explained in the Instructions to Contractors Section.

EXAMINATION OF DOCUMENTS:

- A. Having carefully examined all Bidding Documents entitled “**SCC Interim Transit Center Improvements**” by the Spokane Transit Authority, **as well as the site and local conditions affecting the work**, the undersigned proposes to perform all work in accordance with the Contract Documents for compensation to be computed from the enclosed bid amounts.
- B. Receipt of the following Addenda to the Specifications and Drawings is hereby acknowledged:
  - Addendum No. \_\_\_\_\_ Date \_\_\_\_\_
  - Addendum No. \_\_\_\_\_ Date \_\_\_\_\_
  - Addendum No. \_\_\_\_\_ Date \_\_\_\_\_

**REJECTION: STA reserves the right to reject any or all bid proposals, portions or parts thereof and to waive minor irregularities in bidding. Special attention will be directed to the qualifications of the bidders when considering an award of contract.**

TIME FOR COMPLETION: The Contractor agrees to coordinate the completion of all construction work within forty (40) calendar days beginning on the day of commencement as stated in a Notice to Proceed.

LIQUIDATED DAMAGES: Per the STA Instructions to Contractors Submitting Bids.

SUBMITTAL: The “Bid Response Documents”, “Bid Proposal Form”, and “Responsibility Criteria” constitute the Bid Proposal when completed and submitted. Please **do not** submit the entire Invitation for Bid manual.

PRICES: Each bid item will be priced unless stated otherwise.

UNIT PRICE: Unit prices, if requested, shall govern in case of extension error.

Bidder Name & Signature: \_\_\_\_\_

**BID PROPOSAL FORMS - Continued**

FREIGHT: Bid price(s) to include all freight costs to the project site.

COMPLETION OF BID PROPOSAL FORM:

All bidding procedures and other requirements of Instructions to Bidders and all Contract Documents have been followed.

ATTACHMENTS:

- A. Bid security as required by the Bidding Documents in the amount of 5% of the Base Bid.
- B. Detailed Work Plan based on project plans, pre-bid meeting, project summary and specifications.

AWARD OF CONTRACT:

- A. If written notice of acceptance of all or part of this submittal is mailed, sent electronically, or delivered to undersigned within ninety (90) days after opening of proposals, the undersigned will, within **fifteen (15) days** after date of such notice, execute and deliver the Form of Agreement as specified and furnish Insurance Certificates, Performance Bonds, and Labor and Material Payment Bonds as required.
- B. If the undersigned fails to complete the above requirements, amount of Bid Security shall be forfeited to the Owner.

Bidder Name & Signature: \_\_\_\_\_

**BID PROPOSAL FORMS - Continued**

**Bid Amounts:**

**Base Bid:** \_\_\_\_\_

All bid amounts are to be written out in words as well as figures. Total for all work, including applicable Washington State Sales Tax (WSST). Rule 171 applies to this project.

<u>DESCRIPTION</u>	<u>FIGURES</u>	<u>WRITTEN</u>
--------------------	----------------	----------------

SCC Interim Transit Center Improvements	\$ _____	_____dollars
---	----------	--------------

Bidder agrees and understands that any additional taxes, permits, bonds, prevailing wage certifications, etc. applicable to this project, have been included in the above listed Lump Sum bid.

**TIME FOR COMPLETION:** The Contractor agrees to complete work within forty (40) calendar days beginning on the day of commencement as stated in a Notice to Proceed.

**PRODUCTS/BRANDS OTHER THAN SPECIFIED IN BID DOCUMENT TO BE USED:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTE:** Any deviation from technical specifications provided in bid document must be approved in advance by Owner.

Bidder Name & Signature: \_\_\_\_\_

**BID RESPONSE FORMS**

**BIDDER ADMINISTRATIVE INFORMATION**

BIDDER NAME: \_\_\_\_\_  
(as registered with the State of Washington)

PHYSICAL ADDRESS: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP: \_\_\_\_\_

TELEPHONE and FAX NUMBERS, including area code: \_\_\_\_\_

WASHINGTON STATE CONTRACTORS REGISTRATION NUMBER: \_\_\_\_\_

WASHINGTON STATE ELECTRICAL CONTRACTOR'S LICENSE NUMBER: \_\_\_\_\_

FEDERAL TAX IDENTIFICATION NUMBER: \_\_\_\_\_

WASHINGTON STATE UBI NUMBER: \_\_\_\_\_

STATE INDUSTRIAL ACCOUNT IDENTIFICATION NUMBER: \_\_\_\_\_

\*\* NOTE: If a corporation, write State of Incorporation under signature. If a partnership, give full names of all partners.

**INSURANCE COMPANY:**

Name of company: \_\_\_\_\_

Mailing Address including zip code: \_\_\_\_\_

Name of Insurance Agent: \_\_\_\_\_

Telephone number including area code: \_\_\_\_\_

Fax number including zip code: \_\_\_\_\_

**BONDING COMPANY:**

Name of Surety: \_\_\_\_\_

Mailing Address including zip code: \_\_\_\_\_

Name of Bonding Agent: \_\_\_\_\_

Telephone number including area code: \_\_\_\_\_

Person/Entity Name: \_\_\_\_\_ Signature of Bidder: \_\_\_\_\_

**BID RESPONSE FORMS - Continued**

**BIDDER QUALIFICATION STATEMENT**

The following statements of experience, personnel, equipment, and general qualifications of the Bidder are submitted with the assurance that the owner can rely on its accuracy and truthfulness. If more space is required for your answers, please attach a continuation sheet(s) to the corresponding bid response page referencing the item number.

1. The company has been in business continuously from (month and year) \_\_\_\_\_.
2. The company has had experience comparable to that required under the proposed contract:
  - a. As a prime contractor for \_\_\_\_\_years.
  - b. As a subcontractor for \_\_\_\_\_years.
3. The following is a partial list of work completed that was on an order of magnitude equal to or greater in scope and complexity to that required under the proposed contract.

<u>Year</u>	<u>Owner &amp; Contact Person</u>	<u>Phone No.</u>	<u>Location</u>	<u>Contract Value</u>
-------------	-----------------------------------	------------------	-----------------	-----------------------

4. A list of supervisory personnel and/or the project manager currently employed by the Bidder that will be responsible for work on this project. Please attach a brief (1 page maximum) resume for each person listed. If a resume(s) is not included in the bid documents, the bidder agrees to furnish a resume(s) within 24 hours of notice by STA.

<u>Name</u>	<u>Title</u>	<u>Years of Experience</u>
-------------	--------------	----------------------------

5. Following is a listing of all projects the company has undertaken in the last five (5) years which have resulted in:
  - a. Arbitration or litigation.
  - b. Claims or violations being filed by the Federal Government or the Washington State Departments of L&I, Employment Security, or Revenue.
  - c. Liens being filed by suppliers or subcontractors.

Person/Entity Name: \_\_\_\_\_ Signature of Bidder: \_\_\_\_\_

**BID RESPONSE FORMS - Continued**

**BIDDER COMPLIANCE CERTIFICATION**

PROJECT COMPLIANCE

In compliance with the Invitation for Bid, bidder hereby proposes to perform all work for this project in strict accordance with the contract documents, within the time set forth therein, and at the prices bid.

SPECIFICATION COMPLIANCE

The bidder certifies below that his bid complies in all respects with the attached specification documents, including the minimum specifications.

YES \_\_\_\_\_

NO \_\_\_\_\_

If NO, list below, in detail, any and all deviations.

LIST DEVIATIONS:

Person/Entity Name: \_\_\_\_\_ Signature of Bidder \_\_\_\_\_

**BID RESPONSE FORMS - Continued**

**SUBCONTRACTOR LIST**

**Project Number: 13-STA-472**

The Bidder will provide a list of all subcontractors anticipated to be used on this project.

**Use a copy of this page as a master for attachment if necessary.**

If no subcontractors are listed, it will be considered the bidder's affirmation that it does not intend to use any subcontractors on this project.

Type of work - _____
Name of Firm (please print): _____ (as registered with the State of Washington)
Physical Address: _____
City, State, Zip: _____
Telephone/Fax Numbers: _____
Washington State Contractors Registration Number: _____
Washington State Electrical or Plumbers License Number: _____
Federal Tax Identification Number: _____
Washington State UBI Number: _____
State Industrial Account Identification Number: _____
**Note: If a corporation, write State of Incorporation under signature. If a partnership, give full names of all partners.

Person/Entity Name: \_\_\_\_\_ Signature of Bidder \_\_\_\_\_

# BID RESPONSIBILITY FORM

## RESPONSIBLE BIDDER CRITERIA

In accordance with RCW 39.04, before award of a public works contract, a Bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The Bidder must:

1. At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW;
2. Have a current state unified business identifier (UBI) number;
3. If applicable, have industrial insurance coverage for the Bidder's employees working in Washington as required in Title 51 RCW;
4. If applicable, have an employment security department number as required in Title 50 RCW;
5. If applicable, have a state excise tax registration number as required in Title 82 RCW; and
6. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).

In accordance with RCW 39.06, a public works contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria and possesses an electrical contractor license, if required by RCW 19.28, or an elevator contractor license, if required by RCW 70.87. This verification requirement, as well as the responsibility criteria, must be included in every public works contract and subcontract of every tier.

Providing the following information is **MANDATORY** in order to meet "Responsible Bidder" requirements. Failure to provide this information may disqualify your bid as being "**Non-Responsive**". *If your business is not required to have one of the following numbers, provide an explanation.*

1. State of Washington Contractor Registration No. \_\_\_\_\_
2. State of Washington Unified Business Identifier No. \_\_\_\_\_
3. Employment Security Department No. \_\_\_\_\_
4. State Excise Tax Registration No. \_\_\_\_\_
5. Is the payment of Worker's Comp (Industrial Insurance) Premiums current? If your business does not have a Worker's Comp account with the WA State Dept of L&I, please explain why.  
 Yes  
 No (If No, you are not eligible to bid on this project)  
 No Account – Explain why: \_\_\_\_\_
6. Are you disqualified from bidding on public works projects in the State of Washington?  
 Yes (If Yes, you are not eligible to bid on this project)  
 No



**FEDERALLY REQUIRED CERTIFICATE  
CERTIFICATION REGARDING BUY AMERICA**

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certificate must be rejected as nonresponsive.

**Certification requirement for procurement of steel, iron, or manufactured products.**

*Certificate of Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulation in 49 C.F.R. Part 661.5.

Date \_\_\_\_\_

Signature \_\_\_\_\_

CompanyName \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. Part 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

**FEDERALLY REQUIRED CERTIFICATE  
CERTIFICATION REGARDING THE USE OF CONTRACT FUNDS FOR LOBBYING**

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal,, amendment , or modification of any Federal contract, gran, loan or cooperative agreement.

(2) If any funds other than Federal appropriated Funds have been paid or will be paid to any person for making lobbying contracts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement the undersigned shall complete and submit Standard Form --LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31, U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31, U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date

**FEDERAL CERTIFICATE  
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION**

**DBE Participation:** STA is committed to ensuring that all firms regardless of race, color, sex or national origin have equal opportunity to participate in STA contracts. Therefore, STA has established an annual agency goal for DBE participation in its contracting opportunities. It shall be understood that no specific goal has been assigned to this contract; however, contractors and subcontractors are required to comply with the following:

**Non-Discrimination Assurances:**

The contract or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or other such remedy, as STA deems appropriate.

A copy of 49 CFR part 26 may be obtained by contacting STA's DBE Liaison, Spokane Transit Authority, 1230 W. Boone, Spokane, WA 99201, (509) 325-6032.

**Prompt Payment:**

The contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty days from the receipt of each payment the prime contractor receives from STA. The prime contractor agrees further to return retainage payments to each subcontractor within thirty days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above time frames may occur only for good cause following written approval of STA. This clause applies to both DBE and non-DBE subcontractors.

**DBE Bidders List:**

STA is required to create and maintain a bidders list of all firms bidding on prime contracts and bidding or quoting on subcontracts on Department of Transportation-assisted contracts. To assist STA in compliance with this provision of the regulation, please complete and return with your proposal.

Instructions:

1. List the names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;

<b>Name &amp; Address of DBE Firm</b>	<b>Description of Work to perform</b>	<b>\$ Amount</b>
---------------------------------------	---------------------------------------	------------------

1.

2.

3.

**FEDERALLY REQUIRED CERTIFICATE**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION IN A LOWER TIER COVERED TRANSACTION**

The prospective lower tier participant (bidder/Respondent) in an FTA-financed procurement certifies, by submission of this bid/proposal, that neither it nor its "principals" [as defined at 49 CFR, Part 29.995] are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

The prospective lower tier participant agrees by submitting this bid/proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in the covered transaction, unless authorized in writing by STA. The prospective lower tier participant further agrees by submitting this bid/proposal that it will include this certification, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this bid/proposal.

THE LOWER TIER PARTICIPANT CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. #6101 ET SEQ. ARE APPLICABLE THERETO.

Company Name of Respondent: \_\_\_\_\_

Company Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**Form of Contract Between Owner and Contractor**  
**For Spokane Transit Authority Public Works Construction Projects**

Agreement is made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2013.

**Between the Owner: Spokane Transit Authority, a public agency,**  
**Located at: 1230 West Boone Avenue,**  
**Spokane, Washington, 99201-2686**

**And the Contractor:**  
**Located at: (address)**

**State Contractor Registration Number:**  
**UBI Number:**

**For the following project: SCC Interim Transit Center Improvements**  
**Project No. 13-STA-472**

**The design professional: (architect or engineer)**  
**Located at: (address)**

**The owner and contractor agree as follows:**

- 1. The Contract Documents include:**
  - A. This agreement signed by the Owner and the Contractor**
  - B. The Advertisement for Bids and all Bid Documents**
  - C. The General Conditions, Supplemental Conditions [and Special Conditions]**
  - D. The drawings and specifications prepared by the design professional**  
(list the drawing number range from page 1 to \_\_\_ and the date[s])

(list the specifications number range from page 1 to \_\_\_ and the date)

- E. The Invitation for Bid (IFB)**
- F. The addenda: (list any/all addenda by number, date and quantity of pages)**

Number

Date

Quantity of pages

G. Changes in the work issued after execution of the agreement

H. Other documents identified as follows:

2. **Contract sum:** (list base individually the bid amount plus any/all alternates taken)

3. **Unit prices:** (list items by description, the units and limits and the price per unit)

Item(s)

Units/limits

Price per unit

4. **Allowances included in contract sum:** (list any allowances included in the contract sum)

Item

Price

5. **Other terms or conditions not otherwise covered in the noted previous documents.**

6. **In cases where communication is required between the Contractor and STA, such as further information, furnishing of specifications, or obtaining approval of proposed work, such communications from the Contractor shall be forwarded directly to:**

Jessica Charlton  
Project Manager  
Spokane Transit Authority  
1230 W. Boone Ave.  
Spokane, WA 99201  
(509) 325-6049

7. If any provision of this contract is held invalid, the remainder of this contract shall not be affected thereby, if such remainder would then continue to conform to the terms and requirements of applicable law.
8. This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement but all of which together shall constitute one and the same instrument.

**Owner:**

**Contractor**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

E. Susan Meyer

\_\_\_\_\_  
(Printed name)

\_\_\_\_\_  
(Printed name)

CEO

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

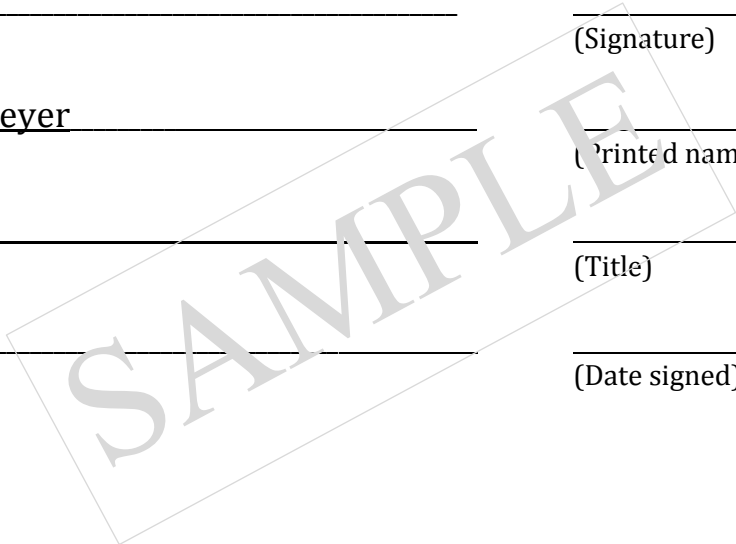
\_\_\_\_\_  
(Date signed)

\_\_\_\_\_  
(Date signed)

**Disadvantaged Business Enterprise  
Review and Approval:**

\_\_\_\_\_  
DBE Liaison Officer

\_\_\_\_\_  
(Printed name)



## **Washington State Prevailing Wages For Spokane County**

In the preparation of its bid, based on these specifications, the bidder is solely responsible to:

1. use the prevailing wage schedule in effect at the bid opening date and time; and
2. determine the appropriate labor classification(s); and utilize the appropriate and correct prevailing wage and benefit rate(s).

The State of Washington Department of Labor and Industries issues revised wage schedules twice per year (every 6 months) which become effective approximately the first of March and the last of August. The wage schedule that will apply to this bid will be the schedule in effect at the time and date of the actual bid opening (the published date including any changes made through the issue of addenda). Therefore the bidder is cautioned to be mindful that addendum changing the bid opening date could make the enclosed schedule obsolete. The bidder is solely responsible to determine what schedule is applicable to the bid and to use that schedule in the preparation of its bid.

The Prevailing Wage Documents for Public Works from the Washington State Department of Labor and Industries for Spokane County may be found on the Department of Labor and Industries website located at:

<http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>

Questions should be referred to the State of Washington Department of Labor & Industries, 901 North Monroe, Suite 100, Spokane, Washington, phone (509) 324-2600 or to PO Box 44540, Olympia WA 98504-4540, phone (360) 902-5335 or Fax (360) 902-5300. Printed copies of the current prevailing wage forms are available upon request.

**It is the responsibility of the bidder to insure that the appropriate labor classification(s) are identified and that the applicable wage and benefit rates are taken into consideration when preparing their bid according to these specifications.**

## **Davis Bacon Wage Determinations For Spokane County**

Disclaimer: Contractor will be responsible for accessing the Davis Bacon Wage Determinations website to verify the published rate schedule and classifications.

<http://www.wdol.gov>

**It is the responsibility of the bidder to insure that the appropriate labor classification(s) are identified and that the applicable wage and benefit rates are taken into consideration when preparing their bid according to these specifications.**

Spokane Transit Authority Public Works Construction Project General Conditions  
Contract # 13-STA-472

The following is adopted and incorporated as STA General Conditions applicable to facilities construction. Although these conditions are organized consistent with the General Conditions for Washington State Facility Construction, the provisions herein are not identical to the Washington State provisions. Please review these General Conditions carefully.

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# GENERAL CONDITIONS FOR SPOKANE TRANSIT AUTHORITY FACILITY CONSTRUCTION

## Part 1- GENERAL PROVISIONS

### 1.01 DEFINITIONS

- A. "Application for Payment" means a written request submitted by Contractor to Owner or, if applicable, A/E for payment of Work completed in accordance with the Contract Documents and approved Schedule of Values, supported by such substantiating data as Owner or, if applicable, A/E may require.
- B. "Architect," "Engineer," or "A/E" means a person or entity lawfully entitled to practice architecture or engineering, representing Owner within the limits of its delegated authority.
- C. "Award" means the formal decision by the Owner notifying a responsible Bidder with the lowest responsive bid of the Owner's acceptance of the bid and intent to enter into a contract with the Bidder.
- D. "Change Order" means a written instrument signed by Owner and Contractor stating their agreement upon all of the following: (1) a change in the Work; (2) the amount of the adjustment in the Contract Sum, if any, and (3) the extent of the adjustment in the Contract Time, if any.
- E. "Claim" means Contractor's exclusive remedy for resolving disputes with Owner regarding the terms of a Change Order or a request for equitable adjustment, as more fully set forth in Part 8.
- F. "Contract Award Amount" is the sum of the Base Bid and any accepted Alternates.
- G. "Contract Documents" means the Advertisement for Bids, Instructions for Bidders, completed Bid Form, General Conditions, Modifications to the General Conditions, Supplemental Conditions, Special Conditions, Contract, other Special Forms, Drawings and Specifications, and all addenda and modifications thereof.
- H. "Contract Sum" is the total amount payable by Owner to Contractor for performance of the Work in accordance with the Contract Document. Except as described below, the Contract Sum includes all taxes imposed by law and properly chargeable to the Work. The Contract Sum does not include Washington State sales tax.
- I. "Contract Time" is the number of calendar days allotted in the Contract Documents for achieving Substantial Completion of the Work.
- J. "Contractor" means the person or entity who has agreed with Owner to perform the Work in accordance with the Contract Documents. Contractor's duties and obligations flow down and become duties and obligations of Subcontractors.
- K. "Day(s)": Unless otherwise specified, day(s) shall mean calendar day(s).
- L. "Drawings" are the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, and may include plans, elevations, sections, details, schedules, and diagrams.
- M. "Final Acceptance" means the written acceptance issued to Contractor by Owner after Contractor has completed the requirements of the Contract Documents, as more fully set forth in Section 6.09E.
- N. "Final Completion" means that the Work is fully and finally complete in accordance with the Contract Documents, as more fully set forth in Section 6.09D.
- O. "Force Majeure" means those acts entitling Contractor to request an equitable adjustment in the Contract Time, as more fully set forth in Section 3.05A.
- P. "Notice" means a written notice which has been delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended or, if delivered or sent by registered or certified mail, to the last business address known to the party giving notice.
- Q. "Notice to Proceed" means a notice from Owner to Contractor that defines the date on which the Contract Time begins to run.
- R. "Owner" means the Spokane Transit Authority ("STA") or its authorized

representative with the authority to enter into, administer, and/or terminate the Work in accordance with the Contract Documents and make related determinations and findings.

- S. "Person" means a corporation, partnership, business association of any kind, trust, company, or individual.
- T. "Prior Occupancy" means Owner's use of all or parts of the Project before Substantial Completion, as more fully set forth in Section 6.08A.
- U. "Progress Schedule" means a schedule of the Work, in a form satisfactory to Owner, as further set forth in Section 3.02B.
- V. "Project" means the total construction of which the Work performed in accordance with the Contract Documents may be the whole or a part and which may include construction by Owner or by separate contractors.
- W. "Project Manual" means the volume usually assembled for the Work which may include the bidding requirements, sample forms, and other Contract Documents
- X. "Project Record" means the separate set of Drawings and Specifications as further set forth in Section 4.02A.
- Y. "Schedule of Values" means a written breakdown allocating the total Contract Sum to each principal category of Work, in such detail as requested by Owner.
- Z. "Specifications" are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.
- AA. "Subcontract" means a contract entered into by Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind for or in connection with the Work.
- BB. "Subcontractor" means any person, other than Contractor, who agrees to furnish or furnishes any supplies, materials, equipment, or

services of any kind in connection with the Work.

- CC. "Substantial Completion" means that stage in the progress of the Work when the construction is sufficiently complete, as more fully set forth in Section 6.07.
- DD. "Work" means the construction and services required by the Contract Documents, and includes, but is not limited to, labor, materials, supplies, equipment, services, permits, and the manufacture and fabrication of components, performed, furnished, or provided in accordance with the Contract Documents.

## 1.02 ORDER OF PRECEDENCE

Any conflict or inconsistency in the Contract Documents shall be resolved by giving the documents precedence in the following order.

1. FTA Regulations and Requirements..
2. Signed Contract, including any Change Orders.
2. Supplemental Conditions.
3. Modifications to the General Conditions.
4. General Conditions.
5. Specifications – Provisions in Division 1 shall take precedence over provisions of any other Division.
6. Drawings -- In case of conflict within the Drawings, large scale drawings shall take precedence over small scale drawings.
7. Signed and Completed Bid Form.
8. Instructions to Bidders.
9. Advertisement for Bids.

## 1.03 EXECUTION AND INTENT

**Contractor Representations:** Contractor makes the following representations to Owner:

1. **Contract Sum reasonable:** The Contract Sum is reasonable compensation for the Work and the Contract Time is adequate for the performance of the Work, as represented by the Contract Documents;
2. **Contractor familiar with project:** Contractor has carefully reviewed the Bid Documents, Contract Documents, visited and examined the Project site, become familiar with the local

conditions in which the Work is to be performed, and satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods, supplies, work, services and other items to be furnished and all other requirements of the Contract Documents, as well as the surface and subsurface conditions and other matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof;

3. **Contractor financially capable:** Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform Contractor's obligations required by the Contract Documents; and
4. **Contractor can complete Work:** Contractor is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform the obligations required by the Contract Documents and has sufficient experience and competence to do so.

## Part 2 - INSURANCE AND BONDS

### 2.01 CONTRACTOR'S LIABILITY INSURANCE

**General Insurance Requirements:** Prior to commencement of the Work, Contractor shall obtain all the insurance required by the Contract Documents and provide evidence satisfactory to Owner that such insurance has been procured. Review of the Contractor's insurance by Owner shall not relieve or decrease the liability of Contractor. Companies writing the insurance to be obtained by this part shall be licensed to do business under Chapter 48 RCW or comply with the Surplus Lines Law of the State of Washington. Contractor shall include in its bid the cost of all insurance and bond costs required to complete the base bid work and accepted alternates. Insurance carriers providing insurance in accordance with the Contract Documents shall be acceptable to Owner, and its A. M. Best rating shall be indicated on the insurance certificates.

**A. Term of Insurance Coverage:** Contractor shall maintain the following insurance coverage during the Work and for one year after Final Acceptance. Contractor shall also maintain the following insurance coverage during the performance of any corrective Work required by Section 5.16.

1. General Liability Insurance: Commercial General Liability (CGL) on an Occurrence

Form. Coverage shall include, but not be limited to:

- a. Completed operations/products liability;
- b. Explosion, collapse\*, and underground; and
- c. Employer's liability coverage.

### 2. Automobile Liability Insurance: Automobile liability.

**B. Industrial Insurance compliance:** Contractor shall comply with the Washington State Industrial Insurance Act and, if applicable, the Federal Longshoremen's and Harbor Workers' Act and the Jones Act.

**C. Insurance to protect for the following:** All insurance coverages shall protect against claims for damages for personal and bodily injury or death, as well as claims for property damage, which may arise from operations in connection with the Work whether such operations are by Contractor or any Subcontractor.

**D. Owner as Additional Insured:** All insurance coverages shall be endorsed to include Owner as an additional named insured for Work performed in accordance with the Contract Documents, and all insurance certificates shall evidence the Owner as an additional insured.

### 2.02 COVERAGE LIMITS

**Insurance Amounts:** The coverage limits shall be as follows:

- A. Limits of Liability shall not be less than \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage (other than Automobile Liability) Each Occurrence; Personal Injury and Advertising Liability Each Occurrence.
- B. \$2,000,000 Combined Single Limit Annual General Aggregate.
- C. \$2,000,000 Annual Aggregate for Products and Completed Operations Liability.
- D. \$1,000,000 Combined Single Limit for Automobile Bodily Injury and Property Damage Liability, Each Accident or Loss.

## 2.03 INSURANCE COVERAGE CERTIFICATES

- A. **Certificate required:** Prior to commencement of the Work, Contractor shall furnish to Owner a completed certificate of insurance coverage.
- B. **List Project information:** All insurance certificates shall name Owner's Project number and Project title.
- C. **Cancellation provisions:** All insurance certificates shall specifically require 45 Days prior notice to Owner of cancellation or any material change, except 30 Days for surplus line insurance.

## 2.04 PAYMENT AND PERFORMANCE BONDS

**Conditions for bonds:** Payment and performance bonds for 100% of the Contract Award Amount plus state sales tax, shall be furnished for the Work, using the Payment Bond and Performance Bond form published by and available from the American Institute of Architects (AIA) – form A312 (or current version of the same). Prior to execution of a Change Order that, cumulatively with previous Change Orders, increases the Contract Award Amount by 15% or more, the Contractor shall provide either new payment and performance bonds for the revised Contract Sum, or riders to the existing payment and performance bonds increasing the amount of the bonds. The Contractor shall likewise provide additional bonds or riders when subsequent Change Orders increase the Contract Sum by 15% or more. No payment or performance bond is required if the contract Sum is \$35,000 or less and Contractor agrees that Owner may, in lieu of the bond, retain 50% of the Contract Sum for the period allowed by RCW 39.08.010.

## 2.05 ALTERNATIVE SURETY

**When alternative surety required:** Contractor shall promptly furnish payment and performance bonds from an alternative surety as required to protect Owner and persons supplying labor or materials required by the Contract Documents if:

- A. Owner has a reasonable objection to the surety;  
or
- B. Any surety fails to furnish reports on its financial condition if requested by Owner.

## 2.06 BUILDER'S RISK

- A. **Contractor to buy Property Insurance:** Contractor shall purchase and maintain property insurance in the amount of the Contract Sum including all Change Orders for the Work on a replacement cost basis until Substantial Completion. For projects not involving New Building Construction, "Installation Floater" is an acceptable substitute for the Builder's Risk Insurance. The insurance shall cover the interest of Owner, Contractor, and any Subcontractors, as their interests may appear.
- B. **Losses covered:** Contractor property insurance shall be placed on an "all risk" basis and insure against the perils of fire and extended coverage and physical loss or damage including theft, vandalism, malicious mischief, collapse, false work, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Owner's and, if applicable, A/E's services and expenses required as a result of an insured loss.
- C. **Waiver of subrogation rights:** Owner and Contractor waive all subrogation rights against each other, any Subcontractors, A/E, A/E's subconsultants, separate contractors, if any, and any of their subcontractors, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by Owner as fiduciary. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

## Part 3 - TIME AND SCHEDULE

### 3.01 PROGRESS AND COMPLETION

**Contractor to meet schedule:** Contractor shall diligently prosecute the Work, with adequate forces, achieve Substantial Completion within the Contract Time, and achieve Final Completion within a reasonable period thereafter.

### 3.02 CONSTRUCTION SCHEDULE

A. **Preliminary Progress Schedule:** Unless otherwise provided in the Contract, supplemental conditions, or modifications to these General Conditions, Contractor shall, within 14 Days after issuance of the Notice to Proceed, submit a preliminary Progress Schedule. The Progress Schedule shall show the sequence in which Contractor proposes to perform the Work, and the dates on which Contractor plans to start and finish major portions of the Work, including dates for shop drawings and other submittals, and for acquiring materials and equipment.

B. **Form of Progress Schedule:** The Progress Schedule shall be created, maintained and edited using MS Project software or similar software identified and agreed to by and between the parties. The scheduling of construction is the responsibility of the Contractor and is included in the contract to assure adequate planning and execution of the work. The schedule will be used to evaluate progress of the work for payment based on the Schedule of Values. The schedule shall show the Contractor's planned order and interdependence of activities, and sequence of work. As a minimum the schedule shall include:

- Date of Notice to Proceed;
- Activities (resources, durations, individual responsible for activity, early starts, late starts, early finishes, late finishes, etc.);
- Utility Shutdowns;
- Interrelationships and dependence of activities;
- Planned vs. actual status for each activity;
- Substantial completion;
- Punch list;
- Final inspection;

- Final completion, and
- Float time

The Schedule Duration shall be based on the Contract Time of Completion listed on the Bid Proposal form. The Owner shall not be obligated to accept any Early Completion Schedule suggested by the Contractor. The Contract Time for Completion shall establish the Schedule Completion Date.

If the Contractor feels that the work can be completed in less than the Specified Contract Time, then the Surplus Time shall be considered Project Float. This Float time shall be shown on the Project Schedule. It shall be available to accommodate changes in the work and unforeseen conditions.

Neither the Contractor nor the Owner have exclusive right to this Float Time. It belongs to the project.

C. **Owner comments on Progress Schedule:** Owner shall return comments on the preliminary Progress Schedule to Contractor within 14 Days of receipt. Review by Owner of Contractor's schedule does not constitute an approval or acceptance of Contractor's construction means, methods, or sequencing, or its ability to complete the Work within the Contract Time. Contractor shall revise and resubmit its schedule, as necessary. Owner may withhold a portion of progress payments until a Progress Schedule has been submitted which meets the requirements of this section.

D. **Monthly updates and compliance with Progress Schedule:** Contractor shall utilize and comply with the Progress Schedule. On a monthly basis, or as otherwise directed by Owner, Contractor shall submit an updated Progress Schedule at its own expense to Owner indicating actual progress. If, in the opinion of Owner, Contractor is not in conformance with the Progress Schedule for reasons other than acts of Force Majeure as identified in Section 3.05, Contractor shall take such steps as are necessary to bring the actual completion dates of its work activities into conformance with the Progress Schedule, and if directed by Owner, Contractor shall submit a corrective

action plan or revise the Progress Schedule to reconcile with the actual progress of the Work.

- E. **Contractor to notify Owner of delays:** Contractor shall promptly notify Owner in writing of any actual or anticipated event which is delaying or could delay achievement of any milestone or performance of any critical path activity of the Work. Contractor shall indicate the expected duration of the delay, the anticipated effect of the delay on the Progress Schedule, and the action being or to be taken to correct the problem. Provision of such notice does not relieve Contractor of its obligation to complete the Work within the Contract Time.

### 3.03 OWNER'S RIGHT TO SUSPEND THE WORK FOR CONVENIENCE

- A. **Owner may suspend Work:** Owner may, at its sole discretion, order Contractor, in writing, to suspend all or any part of the Work for up to 90 Days, or for such longer period as mutually agreed.
- B. **Compliance with suspension; Owner's options:** Upon receipt of a written notice suspending the Work, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost of performance directly attributable to such suspension. Within a period up to 90 Days after the notice is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, Owner shall either:
1. Cancel the written notice suspending the Work; or
  2. Terminate the Work covered by the notice as provided in the termination provisions of Part 9.
- C. **Resumption of Work:** If a written notice suspending the Work is cancelled or the period of the notice *or any* extension thereof expires, Contractor shall resume Work.
- D. **Equitable Adjustment for suspensions:** Contractor shall be entitled to an equitable adjustment in the Contract Time, or Contract Sum, or both, for increases in the time or cost of performance directly attributable to such suspension, provided Contractor complies with all requirements set forth in Part 7.

### 3.04 OWNER'S RIGHT TO STOP THE WORK FOR CAUSE

- A. **Owner may stop Work for Contractor's failure to perform:** If Contractor fails or refuses to perform its obligations in accordance with the Contract Documents, Owner may order Contractor, in writing, to stop the Work, or any portion thereof, until satisfactory corrective action has been taken.
- B. **No Equitable Adjustment for Contractor's failure to perform:** Contractor shall not be entitled to an equitable adjustment in the Contract Time or Contract Sum for any increased cost or time of performance attributable to Contractor's failure or refusal to perform or from any reasonable remedial action taken by Owner based upon such failure.
- C. **Opportunity to Cure:** STA in its sole discretion may, in the case of termination for breach or default, allow the Contractor an appropriate period of time, as determined by STA, in which to cure the defect of goods or service. In such case, the notice of termination will state the nature of the breach or default, the time period in which cure is permitted and other appropriate conditions. If the Contractor fails to remedy to STA's satisfaction the breach or default of any of the terms, covenants, or conditions of this contract within the stated period of time for remedy, STA shall have the right to terminate the contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude STA from also pursuing all available legal remedies against the Contractor and its sureties for said breach or default.
- D. **Waiver of Remedies for any Breach.** In the event that STA elects to waive its remedies for any breach by the Contractor of any covenant, term or condition of this contract, such waiver by STA shall not limit STA's legal remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.

### 3.05 DELAY

- A. **Force Majeure actions not a default; Force Majeure defined:** Any delay in or failure of performance by Owner or Contractor, other than the payment of money, shall not constitute a default hereunder if and to the extent the cause for such delay or failure of performance was

unforeseeable and beyond the control of the party (“Force Majeure”). Acts of Force Majeure include, but are not limited to:

1. Acts of God or the public enemy;
2. Acts or omissions of any government entity;
3. Fire or other casualty for which Contractor is not responsible;
4. Quarantine or epidemic;
5. Strike or defensive lockout;
6. Unusually severe weather, in excess of weather conditions experienced within the area any time in the preceding ten years:
  - A. Monthly rainfall in excess of the highest monthly rainfall experienced for the same month.
  - B. Annual rainfall in excess of the highest annual rainfall experienced.
  - C. Monthly snowfall in excess of the highest monthly snowfall experienced for the same month.
  - D. Annual snowfall in excess of the highest annual snowfall experienced.
  - E. Average high temperatures, for the summer months, in excess of the highest temperatures experienced.
  - F. Average low temperatures for the winter months, lower than the lowest average temperatures experienced.
7. Unusual delay in receipt of supplies or products which were ordered and expedited and for which no substitute reasonably acceptable to Owner was available.

**B. Contract Time adjustment for Force Majeure:** Contractor shall be entitled to an equitable adjustment in the Contract Time for changes in the time of performance directly attributable to an act of Force Majeure, provided it makes a request for equitable adjustment according to Section 7.03. Contractor shall not

be entitled to an adjustment in the Contract Sum resulting from an act of Force Majeure.

- C. **Contract Time or Contract Sum adjustment if Owner at fault:** STA reserves the right, in its sole discretion, to extend the time for performance of the services contemplated by this Agreement.
- D. **No Contract Time or Contract Sum adjustment if Contractor at fault:** Contractor shall not be entitled to an adjustment in Contract Time or in the Contract Sum for any delay or failure of performance to the extent such delay or failure was caused by Contractor or anyone for whose acts Contractor is responsible.
- E. **Contract Time adjustment only for concurrent fault:** To the extent any delay or failure of performance was concurrently caused by the Owner and Contractor, Contractor shall be entitled to an adjustment in the Contract Time for that portion of the delay or failure of performance that was concurrently caused, provided it makes a request for equitable adjustment according to Section 7.03, but shall not be entitled to an adjustment in Contract Sum.
- F. **Contractor to mitigate delay impacts:** Contractor shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by an act of Force Majeure or otherwise.

### 3.06 NOTICE TO OWNER OF LABOR DISPUTES

- A. **Contractor to notify Owner of labor disputes:** If Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance in accordance with the Contract Documents, Contractor shall immediately give notice, including all relevant information, to Owner.
- B. **Pass through notification provisions to Subcontractors:** Contractor agrees to insert a provision in its Subcontracts and to require insertion in all sub-subcontracts, that in the event timely performance of any such contract is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor or Sub-subcontractor shall immediately notify the next higher tier Subcontractor or Contractor, as

the case may be, of all relevant information concerning the dispute.

### 3.07 DAMAGES FOR FAILURE TO ACHIEVE TIMELY COMPLETION

#### A. Liquidated Damages

1. **Reason for Liquidated Damages:** Timely performance and completion of the Work is essential to Owner and time limits stated in the Contract Documents are of the essence. Owner will incur serious and substantial damages if Substantial Completion of the Work does not occur within the Contract Time. However, it would be difficult if not impossible to determine the exact amount of such damages. Consequently, provisions for liquidated damages are included in the Contract Documents.
2. **Calculation of Liquidated Damages amount:** The liquidated damage amounts set forth in the Contract Documents will be assessed not as a penalty, but as liquidated damages for breach of the Contract Documents. This amount is fixed and agreed upon by and between the Contractor and Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain. This amount shall be construed as the actual amount of damages sustained by the Owner, and may be retained by the Owner and deducted from periodic payments to the Contractor.
3. **Contractor responsible even if Liquidated Damages assessed:** Assessment of liquidated damages shall not release Contractor from any further obligations or liabilities pursuant to the Contract Documents.

#### B. Actual Damages

**Calculation of Actual Damages:** Actual damages will be assessed for failure to achieve Final Completion within the time provided. Actual damages will be calculated on the basis of direct

architectural, administrative, and other related costs attributable to the Project from the date when Final Completion should have been achieved, based on the date Substantial Completion is actually achieved, to the date Final Completion is actually achieved. Owner may offset these costs against any payment due Contractor.

### Part 4 - SPECIFICATIONS, DRAWINGS, AND OTHER DOCUMENTS

#### 4.01 DISCREPANCIES AND CONTRACT DOCUMENT REVIEW

- A. **Specifications and Drawings are basis of the Work:** The intent of the Specifications and Drawings is to describe a complete Project to be constructed in accordance with the Contract Documents. Contractor shall furnish all labor, materials, equipment, tools, transportation, permits, and supplies, and perform the Work required in accordance with the Drawings, Specifications, and other provisions of the Contract Documents.
- B. **Parts of the Contract Documents are complementary:** The Contract Documents are complementary. What is required by one part of the Contract Documents shall be binding as if required by all. Anything mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both.
- C. **Contractor to report discrepancies in Contract Documents:** Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by Owner. If, during the performance of the Work, Contractor finds a conflict, error, inconsistency, or omission in the Contract Documents, it shall promptly and before proceeding with the Work affected thereby, report such conflict, error, inconsistency, or omission to Owner and, if applicable, A/E in writing.
- D. **Contractor knowledge of discrepancy in documents – responsibility:** Contractor shall do no Work without applicable Drawings, Specifications, or written modifications, or Shop Drawings where required, unless instructed to do so in writing by Owner. If Contractor performs any construction activity, and it knows or reasonably should have known

that any of the Contract Documents contain a conflict, error, inconsistency, or omission, Contractor shall be responsible for the performance and shall bear the cost for its correction.

- E. **Contractor to perform Work implied by Contract Documents:** Contractor shall provide any work or materials the provision of which is clearly implied and is within the scope of the Contract Documents even if the Contract Documents do not mention them specifically.
- F. **Interpretation questions referred to Owner:** Questions regarding interpretation of the requirements of the Contract Documents shall be referred to the Owner and, if applicable, the A/E.

#### 4.02 PROJECT RECORD

- A. **Contractor to maintain Project Record Drawings and Specifications:** Contractor shall legibly mark in ink on a separate set of the Drawings and Specifications all actual construction, including depths of foundations, horizontal and vertical locations of internal and underground utilities and appurtenances referenced to permanent visible and accessible surface improvements, field changes of dimensions and details, actual suppliers, manufacturers and trade names, models of installed equipment, and Change Order Proposals (“COP”). This separate set of Drawings and Specifications shall be the “Project Record.”
- B. **Update Project Record weekly and keep on site:** The Project Record shall be maintained on the project site throughout the construction and shall be clearly labeled “PROJECT RECORD.” The Project Record shall be updated at least weekly noting all changes and shall be available to Owner at all times.
- C. **Final Project Record to Owner before Final Acceptance:** Contractor shall submit the completed and finalized Project Record to Owner prior to Final Acceptance.

#### 4.03 SHOP DRAWINGS

- A. **Definition of Shop Drawings:** “Shop Drawings” means documents and other information required to be submitted to Owner and by Contractor pursuant to the Contract

Documents, showing in detail: the proposed fabrication and assembly of structural elements; and the installation (i.e. form, fit, and attachment details) of materials and equipment. Shop Drawings include, but are not limited to, drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, samples, and similar materials furnished by Contractor to explain in detail specific portions of the Work required by the Contract Documents. For materials and equipment to be incorporated into the Work, Contractor submittal shall include the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the item. When directed, Contractor shall submit all samples at its own expense. Owner may duplicate, use, and disclose Shop Drawings provided in accordance with the Contract Documents.

- B. **Approval of Shop Drawings by Contractor and Owner:** Contractor shall coordinate all Shop Drawings, and review them for accuracy, completeness, and compliance with the Contract Documents and shall indicate its approval thereon as evidence of such coordination and review. Where required by law, Shop Drawings shall be stamped by an appropriate professional licensed by the state of Washington. Shop Drawings submitted to Owner without evidence of Contractor’s approval shall be returned for resubmission. Contractor shall review, approve, and submit Shop Drawings with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner or separate contractors. Contractor’s submittal schedule shall allow a reasonable time for Owner and, if applicable, A/E review. Owner and, if applicable, A/E will review, approve, or take other appropriate action on the Shop Drawings. Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings until the respective submittal has been reviewed and the Owner and, if applicable, A/E has approved or taken other appropriate action. Owner and, if applicable, A/E shall respond to Shop Drawing submittals with reasonable promptness. Any Work by Contractor shall be in accordance with reviewed Shop Drawings. Submittals made by Contractor which are not required by the Contract Documents may be returned without action.
- C. **Contractor not relieved of responsibility when Shop Drawings approved:** Approval, or

other appropriate action with regard to Shop Drawings, by Owner and, if applicable, A/E shall not relieve Contractor of responsibility for any errors or omissions in such Shop Drawings, nor from responsibility for compliance with the requirements of the Contract Documents. Unless specified in the Contract Documents, review by Owner and, if applicable, A/E shall not constitute an approval of the safety precautions employed by Contractor during construction, or constitute an approval of Contractor's means or methods of construction. If Contractor fails to obtain approval before installation, and the item or work is subsequently rejected, Contractor shall be responsible for all costs of correction.

- D. **Variations between Shop Drawings and Contract Drawings:** If Shop Drawings show variations from the requirements of the Contract Documents, Contractor shall describe such variations in writing, separate from the Shop Drawings, at the time it submits the Shop Drawings containing such variations. If Owner and, if applicable, A/E approves any such variation, an appropriate Change Order will be issued. If the variation is minor and does not involve an adjustment in the Contract Sum or Contract Time, a Change Order need not be issued; however, the modification shall be recorded upon the Project Record.
- E. **Contractor to submit 5 copies of Shop Drawings:** Unless otherwise provided in Division I, Contractor shall submit to Owner and, if applicable, A/E for approval 5 copies of all Shop Drawings. Unless otherwise indicated, 3 sets of all Shop Drawings shall be retained by Owner and 2 sets shall be returned to Contractor.

#### 4.04 ORGANIZATION OF SPECIFICATIONS

**Specification organization by trade:** Specifications are prepared in sections which conform generally with trade practices. These sections are for Owner and Contractor convenience and shall not control Contractor in dividing the Work among the Subcontractors or in establishing the extent of the Work to be performed by any trade.

#### 4.05 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS, AND OTHER DOCUMENTS

- A. **Owner or, if applicable, A/E, not Contractor, owns Copyright of Drawings and Specifications:** The Drawings, Specifications, and other documents prepared by Owner or, if applicable, A/E (the "Preparer") are instruments of Preparer's service through which the Work to be executed by Contractor is described. Neither Contractor nor any Subcontractor shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by Preparer, and Preparer shall be deemed the author of them and will, along with any rights of Owner, retain all common law, statutory, and other reserved rights, in addition to the copyright. All copies of these documents, except Contractor's set, shall be returned or suitably accounted for to Owner or, if applicable, A/E, on request, upon completion of the Work.
- B. **Drawings and Specifications to be used only for this Project:** The Drawings, Specifications, and other documents prepared by the Owner or, if applicable, A/E, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner and, if applicable, A/E. Contractor and Subcontractors are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by Owner or, if applicable, A/E appropriate to and for use in the execution of their Work.
- C. **Shop Drawing license granted to Owner:** Contractor and all Subcontractors grant a non-exclusive license to Owner, without additional cost or royalty, to use for its own purposes (including reproduction) all Shop Drawings, together with the information and diagrams contained therein, prepared by Contractor or any Subcontractor. In providing Shop Drawings, Contractor and all Subcontractors warrant that they have authority to grant to Owner a license to use the Shop Drawings, and that such license is not in violation of any copyright or other intellectual property right. Contractor agrees to defend and indemnify Owner pursuant to the indemnity provisions in

Sections 5.03 and 5.22 from any violations of copyright or other intellectual property rights arising out of Owner's use of the Shop Drawings hereunder, or to secure for Owner, at Contractor's own cost, licenses in conformity with this section.

- D. **Shop Drawings to be used only for this Project:** The Shop Drawings and other submittals prepared by Contractor, Subcontractors of any tier, or its or their equipment or material suppliers, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor of any tier, or material or equipment supplier, on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner. The Contractor, Subcontractors of any tier, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Shop Drawings and other submittals appropriate to and for use in the execution of their Work under the Contract Documents.

## Part 5 - PERFORMANCE

### 5.01 CONTRACTOR CONTROL AND SUPERVISION

- A. **Contractor responsible for Means and Methods of construction:** Contractor shall supervise and direct the Work, using its best skill and attention, and shall perform the Work in a skillful manner. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work, unless the Contract Documents give other specific instructions concerning these matters. Contractor shall disclose its means and methods of construction when requested by Owner.
- B. **Competent Superintendence required:** Performance of the Work shall be directly supervised by a competent superintendent who has authority to act for Contractor. The superintendent must be satisfactory to the Owner and shall not be changed without the prior written consent of Owner. Owner may require Contractor to remove the superintendent from the Work or Project site, if Owner reasonably deems the superintendent

incompetent, careless, or otherwise objectionable, provided Owner has first notified Contractor in writing and allowed a reasonable period for transition.

- C. **Contractor responsible for acts and omissions of self and agents:** Contractor shall be responsible to Owner for acts and omissions of Contractor, Subcontractors, and their employees and agents.
- D. **Contractor to employ competent and disciplined workforce:** Contractor shall enforce strict discipline and good order among all of the Contractor's employees and other persons performing the Work. Contractor shall not permit employment of persons not skilled in tasks assigned to them. Contractor's employees shall at all times conduct business in a manner which assures fair, equal, and nondiscriminatory treatment of all persons. Owner may, by written notice, request Contractor to remove from the Work or Project site any employee Owner reasonably deems incompetent, careless, or otherwise objectionable.
- E. **Contractor to keep project documents on site:** Contractor shall keep on the Project site a copy of the Drawings, Specifications, addenda, reviewed Shop Drawings, and permits and permit drawings.
- F. **Contractor to comply with ethical standards:** Contractor shall ensure that its owner(s) and employees, and those of its Subcontractors, comply with the Ethics in Public Service Act RCW 42.52, which, among other things, prohibits state employees from having an economic interest in any public works contract that was made by, or supervised by, that employee. Contractor shall remove, at its sole cost and expense, any of its, or its Subcontractors', employees, if they are in violation of this act.

### 5.02 PERMITS, FEES, AND NOTICES

- A. **Contractor to obtain and pay for permits:** Unless otherwise provided in the Contract Documents, Contractor shall pay for and obtain all permits, licenses, and inspections necessary for proper execution and completion of the Work. Prior to Final Acceptance, the approved, signed permits shall be delivered to Owner.

- B. **Allowances for permit fees:** If allowances for permits or utility fees are called for in the Contract Documents and set forth in Contractor's bid, and the actual costs of those permits or fees differ from the allowances in the Contract Documents, the difference shall be adjusted by Change Order.
- C. **Contractor to comply with all applicable laws:** Contractor shall comply with and give notices required by all federal, state, and local laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.

### 5.03 PATENTS AND ROYALTIES

**Payment, indemnification, and notice:** Contractor is responsible for, and shall pay, all royalties and license fees. Contractor shall defend, indemnify, and hold Owner harmless from any costs, expenses, and liabilities arising out of the infringement by Contractor of any patent, copyright, or other intellectual property right used in the Work; however, provided that Contractor gives prompt notice, Contractor shall not be responsible for such defense or indemnity when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents. If Contractor has reason to believe that use of the required design, process, or product constitutes an infringement of a patent or copyright, it shall promptly notify Owner of such potential infringement.

### 5.04 PREVAILING WAGES

- A. **Contractor to pay Prevailing Wages:** Contractor and Subcontractors shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of the Work in accordance with the Davis-Bacon and Related Acts, where applicable, RCW 39.12 and the rules and regulations of the Department of Labor and Industries. The schedule of prevailing wage rates for the locality or localities of the Work, is determined by the Industrial Statistician of the Department of Labor and Industries. It is the Contractor's responsibility to verify the applicable prevailing wage rate.
- B. **Statement of Intent to Pay Prevailing Wage:** Before payment is made by the Owner to the Contractor for any work performed by the Contractor and subcontractors whose work is included in the application for payment, the

Contractor shall submit, or shall have previously submitted to the Owner for the Project, a Statement of Intent to Pay Prevailing Wages, approved by the Department of Labor and Industries, certifying the rate of hourly wage paid and to be paid each classification of laborers, workers, or mechanics employed upon the Work by Contractor and Subcontractors. Such rates of hourly wage shall not be less than the prevailing wage rate.

- C. **Affidavit of Wages Paid:** Prior to release of retainage or, where applicable, bond, the Contractor shall submit to the Owner an Affidavit of Wages Paid, approved by the Department of Labor and Industries, for the Contractor and every subcontractor, of any tier, that performed work on the Project.
- D. **Statement with pay application; Post Statements of Intent at job site:** Each Application for Payment submitted by Contractor shall state that prevailing wages have been paid in accordance with the prefiled statement(s) of intent, as approved. Copies of the approved intent statement(s) shall be posted on the job site with the address and telephone number of the Industrial Statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.
- E. **Contractor to pay for Statements of Intent and Affidavits:** In compliance with chapter 296-127 WAC, Contractor shall pay to the Department of Labor and Industries the currently established fee(s) for each statement of intent and/or affidavit of wages paid submitted to the Department of Labor and Industries for certification.
- F. **Certified Payrolls:** Consistent with WAC 296-127-320, the Contractor and any subcontractor shall submit a certified copy of payroll records if requested.

### 5.05 HOURS OF LABOR

- A. **Overtime:** Contractor shall comply with all applicable provisions of RCW 49.28 and they are incorporated herein by reference. Pursuant to that statute, no laborer, worker, or mechanic employed by Contractor, any Subcontractor, or any other person performing or contracting to

do the whole or any part of the Work, shall be permitted or required to work more than eight hours in any one calendar day, provided, that in cases of extraordinary emergency, such as danger to life or property, the hours of work may be extended, but in such cases the rate of pay for time employed in excess of eight hours of each calendar day shall be not less than one and one-half times the rate allowed for this same amount of time during eight hours of service.

- B. **4-10 Agreements:** Notwithstanding the preceding paragraph, RCW 49.28 permits a contractor or subcontractor in any public works contract subject to those provisions, to enter into an agreement with its employees in which the employees work up to ten hours in a calendar day. No such agreement may provide that the employees work ten-hour days for more than four calendar days a week. Any such agreement is subject to approval by the employees. The overtime provisions of RCW 49.28 shall not apply to the hours, up to forty hours per week, worked pursuant to any such agreement.

#### 5.06 NONDISCRIMINATION

- A. **Discrimination prohibited by applicable laws:** Discrimination in all phases of employment is prohibited by, among other laws and regulations, Title VII of the Civil Rights Act of 1964, the Vietnam Era Veterans Readjustment Act of 1974, Sections 503 and 504 of the Vocational Rehabilitation Act of 1973, the Equal Employment Act of 1972, the Age Discrimination Act of 1967, the Americans with Disabilities Act of 1990, the Civil Rights Act of 1991, Presidential Executive Order 11246, Executive Order 11375, the Washington State Law Against Discrimination, RCW 49.60, and Gubernatorial Executive Order 85-09. These laws and regulations establish minimum requirements for affirmative action and fair employment practices which Contractor and Subcontractors must meet.

B. **During performance of the Work:**

1. **Protected Classes:** Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, marital status, or the presence of any

physical, sensory, or mental disability, Vietnam era veteran status, or disabled veteran status, nor commit any other unfair practices as defined in RCW 49.60.

2. **Advertisements to state nondiscrimination:** Contractor shall, in all solicitations or advertisements for employees placed by or for it, state that all qualified applicants will be considered for employment, without regard to race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability.
3. **Contractor to notify unions and others of nondiscrimination:** Contractor shall send to each labor union, employment agency, or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union, employment agency, or workers' representative of Contractor's obligations according to the Contract Documents and RCW 49.60.
4. **Owner and State access to Contractor records:** Contractor shall permit access to its books, records, and accounts, and to its premises by Owner, and by the Washington State Human Rights Commission, for the purpose of investigation to ascertain compliance with this section of the Contract Documents.
5. **Pass through provisions to Subcontractors:** Contractor shall include the provisions of this section in every Subcontract and shall require Subcontractors to include the provisions of this section in all contracts for the Project

#### 5.07 SAFETY PRECAUTIONS

- A. **Contractor responsible for safety:** Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and

programs in connection with the performance of the Work.

- B. Contractor safety responsibilities:** In carrying out its responsibilities according to the Contract Documents, Contractor shall protect the lives and health of employees performing the Work and other persons who may be affected by the Work; prevent damage to materials, supplies, and equipment whether on site or stored off-site; and prevent damage to other property at the site or adjacent thereto. Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss; shall erect and maintain all necessary safeguards for such safety and protection; and shall notify owners of adjacent property and utilities when prosecution of the Work may affect them.
- C. Contractor to maintain safety records:** Contractor shall maintain an accurate record of exposure data on all incidents relating to the Work resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment. Contractor shall immediately report any such incident to Owner. Owner shall, at all times, have a right of access to all records of exposure.
- D. Contractor to provide HazMat information and training:** Contractor shall provide all persons working on the Project site with information and training on hazardous chemicals in their work at the time of their initial assignment, and whenever a new hazard is introduced into their work area.

**1. Information. At a minimum, Contractor shall inform persons working on the Project site of:**

- a. WAC Requirements:** the requirements of chapter 296-62 WAC, General Occupational Health Standards;
- b. Presence of Hazardous Chemicals:** Any operations in their work area where hazardous chemicals are present; and
- c. Hazard communications program:** The location and availability of written hazard communication programs, including the required list(s) of hazardous chemicals and material safety data sheets required by

chapter 296-62 WAC.

**2. Training.** At a minimum, Contractor shall provide training for persons working on the Project site which includes:

**a. Detecting hazardous chemicals:** Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.);

**b. Hazards of chemicals:** The physical and health hazards of the chemicals in the work area;

**c. Protection from hazards:** The measures such persons can take to protect themselves from these hazards, including specific procedures Contractor, or its Subcontractors, or others have implemented to protect those on the Project site from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used; and

**d. Hazard communications program:** The details of the hazard communications program developed by Contractor, or its Subcontractors, including an explanation of the labeling system and the material safety data sheet, and how employees can obtain and use the appropriate hazard information.

**E. Hazardous, toxic or harmful substances:** Contractor's responsibility for hazardous, toxic, or harmful substances shall include the following duties:

**1. Illegal use of dangerous substances:** Contractor shall not keep, use, dispose, transport, generate, or sell on or about the Project site, any substances now or hereafter designated as, or which are subject to regulation as, hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute or ordinance (hereinafter collectively referred to as "hazardous substances") in violation of any such law, regulation, statute, or ordinance, but in no case shall any such hazardous substance be stored more than 90 Days on the Project site.

**2. Contractor notifications of spills, failures, inspections, citations, and fines:**

Contractor shall promptly notify Owner of all spills or releases of any hazardous substances which are otherwise required to be reported to any regulatory agency and pay the cost of cleanup. Contractor shall promptly notify Owner of all failures to comply with any federal, state, or local law, regulation, or ordinance; all inspections of the Project site by any regulatory entity concerning the same; any citation, all regulatory orders or fines; and all responses or interim cleanup actions taken by or proposed to be taken by any government entity or private party on the Project site.

**F. Public safety and traffic:** All Work shall be performed with due regard for the safety of the public. Contractor shall perform the Work so as to cause a minimum of interruption of vehicular traffic or inconvenience to pedestrians. All arrangements to care for such traffic shall be Contractor's responsibilities. All expenses involved in the maintenance of traffic by way of detours shall be borne by Contractor.

**G. Contractor to act in an emergency:** In an emergency affecting the safety of life or the Work or of adjoining property, Contractor is permitted to act, at its discretion, to prevent such threatened loss or injury, and **Contractor shall so act if so authorized or instructed.**

**H. No duty of safety by Owner or A/E:** Nothing provided in this section shall be construed as imposing any duty upon Owner and, if applicable, A/E with regard to, or as constituting any express or implied assumption of control or responsibility over, Project site safety, or over any other safety conditions relating to employees or agents of Contractor or any of its Subcontractors, or the public.

**5.08 OPERATIONS, MATERIAL HANDLING, AND STORAGE AREAS**

**A. Limited storage areas:** Contractor shall confine all operations, including storage of materials, to Owner-approved areas.

**B. Temporary buildings and utilities at Contractor expense:** Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be provided by Contractor only with the consent of Owner and without expense to Owner. The temporary buildings and utilities

shall be removed by Contractor at its expense upon completion of the Work.

**C. Roads and vehicle loads:** Contractor shall use only established roadways or temporary roadways authorized by Owner. When materials are transported in prosecuting the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by federal, state, or local law or regulation.

**D. Ownership and reporting by Contractor of demolished materials:** Ownership and control of all materials or facility components to be demolished or removed from the Project site by Contractor shall immediately vest in Contractor upon severance of the component from the facility or severance of the material from the Project site. Contractor shall be responsible for compliance with all laws governing the storage and ultimate disposal. Contractor shall provide Owner with a copy of all manifests and receipts evidencing proper disposal when required by Owner or applicable law.

**E. Contractor responsible for care of materials and equipment on-site:** Contractor shall be responsible for the proper care and protection of its materials and equipment delivered to the Project site. Materials and equipment may be stored on the premises subject to approval of Owner. When Contractor uses any portion of the Project site as a shop, Contractor shall be responsible for any repairs, patching, or cleaning arising from such use.

**F. Contractor responsible for loss of materials and equipment:** Contractor shall protect and be responsible for any damage or loss to the Work, or to the materials or equipment until the date of Substantial Completion, and shall repair or replace without cost to Owner any damage or loss that may occur, except damages or loss caused by the acts or omissions of Owner. Contractor shall also protect and be responsible for any damage or loss to the Work, or to the materials or equipment, after the date of Substantial Completion, and shall repair or replace without cost to Owner any such damage or loss that might occur, to the extent such damages or loss are caused by the acts or omissions of Contractor, or any Subcontractor.

#### 5.09 PRIOR NOTICE OF EXCAVATION

- A. **Excavation defined:** Use of locator services: “Excavation” means an operation in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means, except the tilling of soil less than 12 inches in depth for agricultural purposes, or road ditch maintenance that does not change the original road grade or ditch flow line. Before commencing any excavation, Contractor shall provide notice of the scheduled commencement of excavation to all owners of underground facilities or utilities, through locator services.

#### 5.10 UNFORESEEN PHYSICAL CONDITIONS

- A. **Notice requirement for concealed or unknown conditions:** If Contractor encounters conditions at the site which are subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then Contractor shall give written notice to Owner promptly and in no event later than 7 Days after the first observance of the conditions. Conditions shall not be disturbed prior to such notice.
- B. **Adjustment in Contract Time and Contract Sum:** If such conditions differ materially and cause a change in Contractor’s cost of, or time required for, performance of any part of the Work, the Contractor may be entitled to an equitable adjustment in the Contract Time or Contract Sum, or both, provided it makes a request therefore as provided in Part 7.

#### 5.11 PROTECTION OF EXISTING STRUCTURES, EQUIPMENT, VEGETATION, UTILITIES, AND IMPROVEMENTS

- A. **Contractor to protect and repair property:** Contractor shall protect from damage all existing structures, equipment, improvements, utilities, and vegetation: at or near the Project site; and on adjacent property of a third party, the locations of which are made known to or should be known by Contractor. Contractor shall repair any damage, including that to the property of a third party, resulting from failure

to comply with the requirements of the Contract Documents or failure to exercise reasonable care in performing the Work. If Contractor fails or refuses to repair the damage promptly, Owner may have the necessary work performed and charge the cost to Contractor.

- B. **Tree and vegetation protection:** Contractor shall only remove trees when specifically authorized to do so, and shall protect vegetation that will remain in place.

#### 5.12 LAYOUT OF WORK

- A. **Advanced planning of the Work:** Contractor shall plan and lay out the Work in advance of operations so as to coordinate all work without delay or revision.
- B. **Layout responsibilities:** Contractor shall lay out the Work from Owner-established baselines and bench marks indicated on the Drawings, and shall be responsible for all field measurements in connection with the layout. Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the Work. Contractor shall be responsible for executing the Work to the lines and grades that may be established. Contractor shall be responsible for maintaining or restoring all stakes and other marks established.

#### 5.13 MATERIAL AND EQUIPMENT

- A. **Contractor to provide new and equivalent equipment and materials:** All equipment, material, and articles incorporated into the Work shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in the Contract Documents. References in the Specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard quality and shall not be construed as limiting competition. Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of A/E, is equal to that named in the specifications, unless otherwise specifically provided in the Contract Documents.
- B. **Contractor responsible for fitting parts together:** Contractor shall do all cutting, fitting, or patching that may be required to make

its several parts fit together properly, or receive or be received by work of others set forth in, or reasonably implied by, the Contract Documents. Contractor shall not endanger any work by cutting, excavating, or otherwise altering the Work and shall not cut or alter the work of any other contractor unless approved in advance by Owner.

- C. **Owner may reject defective Work:** Should any of the Work be found defective, or in any way not in accordance with the Contract Documents, this work, in whatever stage of completion, may be rejected by Owner.

#### 5.14 AVAILABILITY AND USE OF PREMISES AND UTILITY SERVICES

- A. **Use of Premises:** Contractor's use of Owner's premises is limited to Project activities within the areas identified.
- B. **Owner's Occupation of Site:** The Owner may occupy the site and existing building(s) during the entire work period. Contractor agrees to cooperate with Owner during operation to minimize conflicts and facilitate Owner usage. Contractor agrees to perform the work so as not to interfere with the Owner's operations.
- C. **Contractor must allow Owner access:** Contractor must at all times provide for and allow Owner access. Contractor shall not store or stage vehicles or materials on driveways or at entrances and must keep these access points serving the premises clear and available to the Owner at all times.
- D. **Owner to provide and charge for utilities:** Owner shall make all reasonable utilities available to Contractor from existing outlets and supplies, as specified in the Contract Documents. Unless otherwise provided in the Contract Documents, the utility service consumed shall be charged to or paid for by Contractor at prevailing rates charged to Owner or, where the utility is produced by Owner, at reasonable rates determined by Owner. Contractor will carefully conserve any utilities furnished.
- E. **Contractor to install temporary connections and meters:** Contractor shall, at its expense and in a skillful manner satisfactory to Owner, install and maintain all necessary temporary connections and distribution lines, together with

appropriate protective devices, and all meters required to measure the amount of each utility used for the purpose of determining charges. Prior to the date of Final Acceptance, Contractor shall remove all temporary connections, distribution lines, meters, and associated equipment and materials.

#### 5.15 TESTS AND INSPECTION

- A. **Owner to provide for all testing and inspection of Work:** Owner shall maintain an adequate testing and inspection program and perform such tests and inspections as are necessary or required to ensure that the Work conforms to the requirements of the Contract Documents. Contractor shall be responsible for quality surveillance of all its Work and all Work performed by any Subcontractor. Unless otherwise provided, Owner shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. Contractor shall give Owner timely notice of when and where tests and inspections are to be made. Contractor shall maintain complete inspection records and make them available to Owner.
- B. **Owner may conduct tests and inspections:** Owner may, at any reasonable time, conduct such inspections and tests as it deems necessary to ensure that the Work is in accordance with the Contract Documents. Owner shall promptly notify Contractor if an inspection or test reveals that the Work is not in accordance with the Contract Documents. Unless the subject items are expressly accepted by Owner, such Owner inspection and tests are for the sole benefit of Owner and do not:
  1. Constitute or imply acceptance;
  2. Relieve Contractor of responsibility for providing adequate quality control measures;
  3. Relieve Contractor of responsibility for risk of loss or damage to the Work, materials, or equipment;
  4. Relieve Contractor of its responsibility to comply with the

requirements of the Contract Documents; or

5. Impair Owner's right to reject defective or nonconforming items, or to avail itself of any other remedy to which it may be entitled.

C. **Inspections or inspectors do not modify Contract Documents:** Neither observations by an inspector retained by Owner, the presence or absence of such inspector on the site, nor inspections, tests, or approvals by others, shall relieve Contractor from any requirement of the Contract Documents, nor is any such inspector authorized to change any term or condition of the Contract Documents.

D. **Contractor responsibilities on inspections:** Contractor shall promptly furnish, without additional charge, all facilities, labor, material and equipment reasonably needed for performing such safe and convenient inspections and tests as may be required by Owner. Owner may charge Contractor any additional cost of inspection or testing when Work is not ready at the time specified by Contractor for inspection or testing, or when prior rejection makes reinspection or retest necessary. Owner shall perform its inspections and tests in a manner that will cause no undue delay in the Work.

#### 5.16 CORRECTION OF NONCONFORMING WORK

A. **Work covered by Contractor without inspection:** If a portion of the Work is covered contrary to the requirements in the Contract Documents, it must, if required in writing by Owner, be uncovered for Owner's observation and be replaced at the Contractor's expense and without change in the Contract Time.

B. **Payment provisions for uncovering covered Work:** If, at any time prior to Final Completion, Owner desires to examine the Work, or any portion of it, which has been covered, Owner may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an adjustment in the Contract Sum for the costs of uncovering and replacement, and, if completion of the Work is thereby delayed, an adjustment in the Contract Time, provided it

makes such a request as provided in Part 7. If such Work is not in accordance with the Contract Documents, the Contractor shall pay the costs of examination and reconstruction.

C. **Contractor to correct and pay for non-conforming Work:** Contractor shall promptly correct Work found by Owner not to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed, or completed. Contractor shall bear all costs of correcting such nonconforming Work, including additional testing and inspections.

D. **Contractor's compliance with warranty provisions:** If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or within one year after the date for commencement of any system warranties established under Section 5.16D, 5.21, 6.08B, or within the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct it promptly after receipt of written notice from Owner to do so. Owner shall give such notice promptly after discovery of the condition. This period of one year shall be extended, with respect to portions of Work first performed after Substantial Completion, by the period of time between Substantial Completion and the actual performance of the Work. Contractor's duty to correct with respect to Work repaired or replaced shall run for one year from the date of repair or replacement. Obligations under this paragraph shall survive Final Acceptance.

E. **Contractor to remove non-conforming Work:** Contractor shall remove from the Project site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Owner.

F. **Owner may charge Contractor for non-conforming Work:** If Contractor fails to correct nonconforming Work within a reasonable time after written notice to do so, Owner may replace, correct, or remove the nonconforming Work and charge the cost thereof to the Contractor.

- G. **Contractor to pay for damaged Work during correction:** Contractor shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, caused by Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.
- H. **No period of limitation on other requirements:** Nothing contained in this section shall be construed to establish a period of limitation with respect to other obligations which Contractor might have according to the Contract Documents. Establishment of the time period of one year as described in Section 5.16D relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the Contractor's obligation to comply with the Contract Documents may be sought to be enforced, including the time within which such proceedings may be commenced.
- I. **Owner may accept non-conforming Work and charge Contractor:** If Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, Owner may do so instead of requiring its removal and correction, in which case the Contract Sum may be reduced as appropriate and equitable.

#### 5.17 CLEAN UP

##### **Contractor to keep site clean and leave it clean:**

Contractor shall at all times keep the Project site, including hauling routes, infrastructures, utilities, and storage areas, free from accumulations of waste materials. Before completing the Work, Contractor shall remove from the premises its rubbish, tools, scaffolding, equipment, and materials. Upon completing the Work, Contractor shall leave the Project site in a clean, neat, and orderly condition satisfactory to Owner. If Contractor fails to clean up as provided herein, and after reasonable notice from Owner, Owner may do so and the cost thereof shall be charged to Contractor. Contractor further agrees:

- A. To comply with regulations of authorities having jurisdiction and safety standards for cleaning;
- B. To not burn waste materials;
- C. To not bury debris or excess materials on the Owner's property;

- D. To not discharge volatile, harmful, or dangerous materials into drainage systems; and
- E. To remove waste materials from the site and dispose of in a lawful manner.
- F. Where extra materials of value remaining after completion of associated work have become the Owner's property, arrange for disposition of these materials as directed.

#### 5.18 ACCESS TO WORK AND COMMUNICATIONS REGARDING PROJECT STATUS

- A. **Owner and A/E access to Work site:** Contractor shall provide Owner and, if applicable, A/E access to the Work in progress wherever located.
- B. **Pre-Project Conference:** Owner shall conduct a pre-project conference after execution of the Agreement and prior to commencement of Contractor's performance. The parties to the Agreement shall review their respective responsibilities and personnel assignments.
- C. **Attendees -** The Owner, the Contractor and its superintendent, subcontractors, suppliers, manufacturers, and other concerned parties shall be represented by persons authorized to conclude matters relating to the Work.
- D. **Agenda -** Discuss significant items that could affect progress, including the tentative project progress schedule, critical sequencing, use of the premises, and procedures for processing Change Orders and equipment deliveries.
- E. A/E shall record significant discussions, agreements and disagreements at each conference, along with the approved schedule. Distribute the meeting record to everyone concerned, promptly, including the Owner. Contractor is required to distribute recordings of significant discussions and/or agreements to affected subcontractors and prime suppliers.
- F. Do not proceed if the conference cannot be successfully concluded. Initiate necessary actions to resolve impediments and

reconvene the conference at the earliest feasible date.

- G. A/E or Owner shall conduct Progress Meetings at regular intervals. Contractor should attempt to coordinate meeting dates with preparation of payment requests.
- H. Agenda - Review minutes of the previous progress meeting. Review significant items that could affect progress. Include topics appropriate to the current status of the Project.
- I. Review project progress schedule since the last meeting. Determine where each activity is in relation to the schedule, whether on time or ahead of, or behind, the schedule. Determine how areas that are behind schedule will be expedited; secure commitments from parties involved to do so. Discuss whether revisions are required to ensure that current and subsequent activities will be completed within the Contract time.
- J. Reporting - No later than 3 days after each meeting, distribute copies of minutes of the meeting to each party present and to parties who should have been present. Include a summary, in narrative form, of progress since the previous meeting.

#### 5.19 OTHER CONTRACTS

**Owner may award other contracts; Contractor to cooperate:** Owner may undertake or award other contracts for additional work at or near the Project site. Contractor shall reasonably cooperate with the other contractors and with Owner's employees and shall carefully adapt scheduling and perform the Work in accordance with these Contract Documents to reasonably accommodate the other work.

#### 5.20 SUBCONTRACTORS AND SUPPLIERS

**A. Subcontractor Responsibilities:** The Contractor shall include the language of this paragraph in each of its first tier subcontracts and shall require each of its subcontracts to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. Upon request of the Owner, the Contractor shall promptly provide documentation to the Owner demonstrating that the subcontractor meets the subcontractor responsibility criteria below. The requirements of this paragraph apply to all

subcontractors regardless of tier. At the time of subcontract execution the Contractor shall verify that each of its first tier subcontracts meets the following bidder responsibility criteria.

1. Have a current certificate of registration as a contractor in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
2. Have a current Washington Unified Business Identifier (UBI) number;
3. If applicable, have
  - a. Industrial Insurance (workers' compensation coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW;
  - b. A Washington Employment Security Department number, as required in Title 50 RCW;
  - c. A Washington Department of Revenue state excise tax registration number, as required in Title 82, RCW;
  - d. An electrical contractor license, if required by Chapter 19.28 RCW;
  - e. An elevator contractor license, if required by Chapter 19.28, RCW;
4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).
5. On a project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ration without appropriate supervision, or outside their approved work process as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the Owner's first advertisement of the project.

**B. Provide names of Subcontractors and use qualified firms:** Before submitting the first Application for Payment, Contractor shall furnish in writing to Owner the names, addresses, and telephone numbers of all Subcontractors, as well as suppliers providing materials in excess of \$2,500. Contractor shall utilize Subcontractors and suppliers which are experienced and qualified, and meet the requirements of the Contract Documents, if any. Contractor shall not utilize any Subcontractor or supplier to whom the Owner has a reasonable objection, and shall obtain Owner's written consent before making any substitutions or additions.

**C. Subcontracts in writing and pass through provision:** All Subcontracts must be in writing. By appropriate written agreement, Contractor shall require each Subcontractor, so far as applicable to the Work to be performed by the Subcontractor, to be bound to Contractor by terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities which Contractor assumes toward Owner in accordance with the Contract Documents. Each Subcontract shall preserve and protect the rights of Owner in accordance with the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. However, nothing in this paragraph shall be construed to alter the contractual relations between Contractor and its Subcontractors with respect to insurance or bonds.

**D. Coordination of Subcontractors; Contractor responsible for Work:** Contractor shall schedule, supervise, and coordinate the operations of all Subcontractors. No Subcontracting of any of the Work shall relieve Contractor from its responsibility for the performance of the Work in accordance with the Contract Documents or any other obligations of the Contract Documents.

**E. Automatic assignment of subcontracts:** Each subcontract agreement for a portion of the Work is hereby assigned by Contractor to Owner provided that:

1. **Effective only after termination and Owner approval:** The assignment is effective only after termination by Owner for cause pursuant to Section 9.01 and only for those Subcontracts which Owner accepts by notifying the Subcontractor in writing; and

2. **Owner assumes Contractor's responsibilities:** After the assignment is effective, Owner will assume all future duties and obligations toward the Subcontractor which Contractor assumed in the Subcontract.

3. **Impact of bond:** The assignment is subject to the prior rights of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.

## 5.21 WARRANTY OF CONSTRUCTION

A. **Contractor warranty of Work:** In addition to any special warranties provided elsewhere in the Contract Documents, Contractor warrants that all Work conforms to the requirements of the Contract Documents and is free of any defect in equipment, material, or design furnished, or workmanship performed by Contractor.

B. **Contractor responsibilities:** With respect to all warranties, express or implied, for Work performed or materials furnished according to the Contract Documents, Contractor shall:

1. **Obtain warranties:** Obtain all warranties that would be given in normal commercial practice;
2. **Warranties for benefit of Owner:** Require all warranties to be executed, in writing, for the benefit of Owner;
3. **Enforcement of warranties:** Enforce all warranties for the benefit of Owner, if directed by Owner; and
4. **Contractor responsibility for subcontractor warranties:** Be responsible to enforce any subcontractor's, manufacturer's, or supplier's warranties should they extend beyond the period specified in the Contract Documents.

C. **Warranties beyond Final Acceptance:** The obligations under this section shall survive Final Acceptance.

## 5.22 INDEMNIFICATION

A. In performing work and services hereunder, the Contractor, its employees, agents, and representatives, shall be acting as independent contractors, and shall not be deemed or construed to be employees or agents of STA in any manner whatsoever. The Contractor shall not hold itself out as, nor claim to be, an officer or employee of STA by reason hereof, and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of STA. The Contractor shall be solely responsible for any claims for wages or compensation by the Contractor's

employees, agents, and representatives, and shall save and hold STA harmless therefrom.

- B. To the maximum extent permitted by law, the Contractor shall indemnify and hold harmless STA and all of STA's officers, employees, and agents from and against all claims, demands, suits, penalties and liability of any kind, including injuries to persons or damages to property, which arise out of or are due to any acts, errors, or omissions of the Contractor, or the Contractor's employees, agents, and representatives in performing work and services under this Agreement. In the event that any claims, investigations, demands, suits, actions, and lawsuits arise out of any of the aforesaid acts, errors, or omissions, the Contractor shall assume all costs of defending such claims, suits, actions, or lawsuits, including legal fees incurred by STA, any penalties imposed on STA or the Contractor, and all judgments that may be obtained against STA, or any of its officers, agents, or employees in such suits. Further, the Contractor waives immunity under the Industrial Insurance Act and assumes all liability for actions brought by him or his employees against STA for injuries in the performance of this Agreement. The Contractor represents this provision has been negotiated with STA.
- C. To the maximum extent permitted by law, STA shall indemnify and hold harmless the Contractor and all of Contractor's officers, employees, and agents from and against all claims, demands, suits, penalties and liability of any kind, including injuries to persons or damages to property, which arise out of or are due to any acts, errors, or omissions of STA, or STA's employees, agents, and representatives while engaged in the business of public transportation and with respect to its duties and obligations as fee owner of the real property which Contractor has been engaged to manage. In the event that any claims, investigations, demands, suits, actions, and lawsuits arise out of any of the aforesaid acts, errors, or omissions, STA shall assume all costs of defending such claims, suits, actions, or lawsuits, including legal fees incurred by Contractor, any penalties imposed on Contractor or STA, and all judgments that may be obtained against Contractor, or any of its officers, agents, or employees in such suits. STA represents this provision has been negotiated with Contractor.

## Part 6- PAYMENTS AND COMPLETION

### 6.01 CONTRACT SUM

**Owner shall pay Contract Sum:** Owner shall pay Contractor the Contract Sum plus state sales tax for performance of the Work, in accordance with the Contract Documents.

### 6.02 SCHEDULE OF VALUES

**Contractor to submit Schedule of Values:** Before submitting its first Application for Payment, Contractor shall submit to Owner for approval a breakdown allocating the total Contract Sum to each principal category of work, in such detail as requested by Owner ("Schedule of Values"). The approved Schedule of Values shall include appropriate amounts for mobilization and demobilization, record drawings, O&M manuals, and any other requirements for Project closeout, and shall be used by Owner as the basis for progress payments. Project closeout costs should be scheduled independent of any retainage amount. Payment for Work shall be made only for and in accordance with those items included in the Schedule of Values.

### 6.03 APPLICATION FOR PAYMENT

- A. **Statement of Intent to Pay Prevailing Wages:** The Statement of Intent to Pay Prevailing Wages for the Contractor and each Subcontractor must be on file with the Owner before commencement of work and before the first payment can be made.
- B. **Monthly Application for Payment with substantiation:** At monthly intervals, unless determined otherwise by Owner, Contractor shall submit to Owner an itemized Application for Payment for Work completed in accordance with the Contract Documents and the approved Schedule of Values.
- Each Application for Payment must include a statement that prevailing wages have been paid by the contractor in accordance with the pre-filed statement or statements of Intent to Pay prevailing wages on file.
  - If federally funded, certified weekly payrolls must be submitted with Application for Payment.

- Each Application for Payment shall be consistent with previous applications and payments as certified and paid for by the Owner.
  - Payment Application Times - Progress payments will be made only for actual work performed or materials delivered.
  - Payment Application Forms - Use the Form for Applications for Payment included in the addenda or preapproved format.
  - Include amounts of Change Orders and Construction Change Directives issued prior to the last day of the construction period covered by the application.
  - Transmittal- Submit three (3) executed copies of each Application for Payment to the Owner by means ensuring receipt within twenty-four (24) hours; one (1) copy shall be complete, including waivers of lien and similar attachments, when required.
  - Transmit each copy with a transmittal form listing attachments, and recording appropriate information related to the application in a manner acceptable to the Owner.
  - **Waivers of Mechanics Lien:** With each Application for Payment, submit waivers of lien from every entity who may lawfully be entitled to file a lien arising out of the Contract, and related to the work covered by the payment.
  - The Contractor shall be paid, upon the submission of proper applications for payment, within thirty (30) days after STA's approval of the Contractor's application.
- C. **Contractor certifies Subcontractors paid:** By submitting an Application for Payment, Contractor is certifying that all Subcontractors have been paid, less earned retainage in accordance with RCW 60.28.011, as their interests appeared in the last preceding certificate of payment. By submitting an Application for Payment, Contractor is recertifying that the representations set forth in Section 1.03 are true and correct, to the best of Contractor's knowledge, as of the date of the Application for Payment.
- D. **Reconciliation of Work with Progress Schedule:** At the time it submits an Application for Payment, Contractor shall analyze and reconcile, to the satisfaction of Owner, the actual progress of the Work with the Progress Schedule.
- E. **Payment for material delivered to site or stored off-site:** If authorized by Owner, the Application for Payment may include request for payment for material delivered to the Project site and suitably stored, or for completed preparatory work. Payment may similarly be requested for material stored off the Project site, provided Contractor complies with or furnishes satisfactory evidence of the following:
1. **Suitable facility or location:** The material will be placed in a facility or location that is structurally sound, dry, lighted and suitable for the materials to be stored;
  2. **Facility or location within 10 miles of Project:** The facility or location is located within a 10-mile radius of the Project. Other locations may be utilized, if approved in writing, by Owner;
  3. **Facility or location exclusive to Project's materials:** Only materials for the Project are stored within the facility or location (or a secure portion of a facility or location set aside for the Project);
  4. **Insurance provided on materials in facility or location:** Contractor furnishes Owner a certificate of insurance extending Contractor's insurance coverage for damage, fire, and theft to cover the full value of all materials stored, or in transit;
  5. **Facility or location locked and secure:** The facility or location (or secure portion thereof) is continuously under lock and key, and only Contractor's authorized personnel shall have access;

6. **Owner right of access to facility or location:** Owner shall at all times have the right of access in company of Contractor;
7. **Contractor assumes total responsibility for stored materials:** Contractor and its surety assume total responsibility for the stored materials; and
8. **Contractor provides documentation and Notice when materials moved to site:** Contractor furnishes to Owner certified lists of materials stored, bills of lading, invoices, and other information as may be required, and shall also furnish Notice to Owner when materials are moved from storage to the Project site.

#### 6.04 PROGRESS PAYMENTS

- A. **Owner to pay within 30 Days:** Owner shall make progress payments, in such amounts as Owner determines are properly due, within 30 Days after receipt of a properly executed Application for Payment. Owner shall notify Contractor in accordance with chapter 39.76 RCW if the Application for Payment does not comply with the requirements of the Contract Documents.
- B. **Withholding retainage; Options for retainage:** When allowed by law, Owner shall retain 5% of the amount of each progress payment until 45 Days after Final Acceptance and receipt of all documents required by law or the Contract Documents, including, at Owner's request, consent of surety to release of the retainage. In accordance with chapter 60.28 RCW, Contractor may request that monies reserved be retained in a fund by Owner, deposited by Owner in a bank or savings and loan, or placed in escrow with a bank or trust company to be converted into bonds and securities to be held in escrow with interest to be paid to Contractor. Owner may permit Contractor to provide an appropriate bond in lieu of the retained funds.
- C. **Title passes to Owner upon payment:** Title to all Work and materials covered by a progress payment shall pass to Owner at the time of such payment free and clear of all liens, claims,

security interests, and encumbrances. Passage of title shall not, however, relieve Contractor from any of its duties and responsibilities for the Work or materials, or waive any rights of Owner to insist on full compliance by Contractor with the Contract Documents.

- D. **Interest on unpaid balances:** Payments due and unpaid in accordance with the Contract Documents may bear interest as specified in chapter 39.76 RCW.

#### 6.05 PAYMENTS WITHHELD

- A. **Owner's right to withhold payment:** Owner may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to such extent as may be necessary to protect Owner from loss or damage for reasons including but not limited to:
  1. **Non-compliant Work:** Work not in accordance with the Contract Documents;
  2. **Remaining Work to cost more than unpaid balance:** Reasonable evidence that the Work required by the Contract Documents cannot be completed for the unpaid balance of the Contract Sum;
  3. **Owner correction or completion Work:** Work by Owner to correct defective Work or complete the Work in accordance with Section 5.16;
  4. **Contractor's failure to perform:** Contractor's failure to perform in accordance with the Contract Documents; or
  5. **Contractor's negligent acts or omissions:** Cost or liability that may occur to Owner as the result of Contractor's fault or negligent acts or omissions.
- B. **Owner to notify Contractor of withholding for unsatisfactory performance:** In any case where part or all of a payment is going to be withheld for unsatisfactory performance, Owner shall notify Contractor in accordance with chapter 39.76, RCW.

## 6.06 RETAINAGE AND BOND CLAIM RIGHTS

### **Chapters 39.08 RCW and 60.28 RCW**

**incorporated by reference:** chapters 39.08 and 60.28 RCW, concerning the rights and responsibilities of Contractor and Owner with regard to the performance and payment bonds and retainage, are made a part of the Contract Documents by reference as though fully set forth herein.

## 6.07 SUBSTANTIAL COMPLETION

**Substantial Completion defined:** Substantial Completion is the stage in the progress of the Work (or portion thereof designated and approved by Owner) when the construction is sufficiently complete, in accordance with the Contract Documents, so Owner has full and unrestricted use and benefit of the facilities (or portion thereof designated and approved by Owner) for the use for which it is intended. All Work other than incidental corrective or punch list work shall be completed. Substantial Completion shall not have been achieved if all systems and parts are not functional, if utilities are not connected and operating normally, if all required occupancy permits have not been issued, or if the Work is not accessible by normal vehicular and pedestrian traffic routes. The date Substantial Completion is achieved shall be established in writing by Owner. Contractor may request an early date of Substantial Completion which must be approved by Change Order. Owner's occupancy of the Work or designated portion thereof does not necessarily indicate that Substantial Completion has been achieved.

## 6.08 PRIOR OCCUPANCY

A. **Prior Occupancy defined; Restrictions:** Owner may, upon written notice thereof to Contractor, take possession of or use any completed or partially completed portion of the Work ("Prior Occupancy") at any time prior to Substantial Completion. Unless otherwise agreed in writing, Prior Occupancy shall not: be deemed an acceptance of any portion of the Work; accelerate the time for any payment to Contractor; prejudice any rights of Owner provided by any insurance, bond, guaranty, or the Contract Documents; relieve Contractor of the risk of loss or any of the obligations established by the Contract Documents; establish a date for termination or partial termination of the assessment of liquidated damages; or constitute a waiver of claims.

B. **Damage; Duty to repair and warranties:** Notwithstanding anything in the preceding paragraph, Owner shall be responsible for loss of or damage to the Work resulting from Prior Occupancy. Contractor's one year duty to repair any system warranties shall begin on building systems activated and used by Owner as agreed in writing by Owner and Contractor.

## 6.09 FINAL INSPECTION, FINAL COMPLETION, ACCEPTANCE, AND PAYMENT (PROJECT CLOSE-OUT)

A. Final Inspection. On receipt of a request for inspection, the Owner will either proceed with inspection or advise the Contractor of unfilled requirements. The Owner will prepare the Certificate of Substantial Completion following inspection, or advise the Contractor of construction that must be completed or corrected before the certificate will be issued.

B. The Owner will repeat the inspection once when requested and assured that the work has been substantially completed. Subsequent inspections necessary to assure that the work has been substantially completed will be charged at the Owner representative's normal billing rate and a Construction Change Directive will be prepared to deduct the representative's charges from the Contract Sum.

1. The Owner will reinspect the work upon receipt of notice that the work, including inspection list items from earlier inspections, has been completed, except items whose completion has been delayed because of circumstances acceptable to the Owner.

2. Upon completion of reinspection, the Owner will prepare a certificate of final acceptance, or advise the Contractor of work that is incomplete or of obligations that have not been fulfilled but are required for final acceptance.

C. Before requesting final inspection for certification of final acceptance and final payment, Contractor must complete the following:

1. Submit the final payment request with releases and supporting documentation not previously submitted and accepted. Include certificates of insurance for

- products and completed operations where required.
2. Submit an updated final statement, accounting for final additional changes, if applicable, to the Contract Sum.
  3. Submit a certified copy of the Owner's final inspection list of items to be completed or corrected, stating that each item has been completed or otherwise resolved for acceptance and the list has been endorsed and dated by the Owner.
  4. Submit a consent of surety to final payment.
  5. Submit a final liquidated damages settlement statement, if applicable.
  6. Submit evidence of final, continuing insurance coverage complying with insurance requirements.
  7. Closeout and final payment of this project may be contingent upon completion and resolution of a Davis-Bacon Prevailing Wage audit.
  8. Remove temporary protection and facilities installed for protection of the work during construction.
  9. Assurance that unsettled claims will be settled
  10. Assurance that work not complete and accepted will be completed without undue delay
  11. Transmittal of required project construction records to Owner
  12. Proof that taxes, fees, and similar obligations have been paid
  13. Removal of surplus materials (not belonging to STA), rubbish and similar elements
  14. Affidavit of Wages Paid certification
  15. If federally funded, submit final certified weekly payrolls.
  16. All required warranties have been written and submitted
- D. **Final Completion defined:** Final Completion shall be achieved when the Work is fully and finally complete in accordance with the Contract Documents. The date Final Completion is achieved shall be established by Owner in writing, but in no case shall constitute Final Acceptance which is a subsequent, separate, and distinct action.
- E. **Final Acceptance defined:** Final Acceptance shall be achieved when the Contractor has completed the requirements of the Contract Documents. The date Final Acceptance is achieved shall be established by Owner in writing. Prior to Final Acceptance, Contractor shall, in addition to all other requirements in the Contract Documents, submit to Owner a written notice of any outstanding disputes or claims between Contractor and any of its Subcontractors, including the amounts and other details thereof. Neither Final Acceptance, nor final payment, shall release Contractor or its sureties from any obligations of these Contract Documents or the payment and performance, or constitute a waiver of any claims by Owner arising from Contractor's failure to perform the Work in accordance with the Contract Documents.
1. Final payment (retainage or release of bond where applicable) cannot be made until Release of Lien Notices have been received from the Washington State Department of Revenue, Employment Security Department, and the Department of Labor and Industries, if applicable.
- F. **Final payment waives Claim rights:** Acceptance of final payment by Contractor, or any Subcontractor, shall constitute a waiver and release to Owner of all claims by Contractor, or any such Subcontractor, for an increase in the Contract Sum or the Contract Time, and for every act or omission of Owner relating to or arising out of the Work, except for those Claims made in accordance with the procedures,

including the time limits identified in the Contract Documents..

D. Prior to and/or contemporaneous with, Final Acceptance the following must be complete:

1. Contractor must submit specific warranties, workmanship bonds, maintenance agreements, final certifications, and similar documents;
2. Contractor must obtain and submit releases enabling the Owner unrestricted use of the work and access to services and utilities; include occupancy permits, operating certificates, and similar releases as applicable;
3. Contractor must complete final clean up requirements;
4. Contractor must arrange for each installer of equipment that requires regular maintenance to meet with the Owner's personnel to provide instruction in proper operation and maintenance. If installers are not experienced in procedures, provide instruction by manufacturer's representatives;

## Part 7 - CHANGES

### 7.01 CHANGE IN THE WORK

- A. **Changes in Work, Contract Sum, and Contract Time by Change Order:** Owner may, at any time and without notice to Contractor's surety, order additions, deletions, revisions, or other changes in the Work. These changes in the Work shall be incorporated into the Contract Documents through the execution of Change Orders. If any change in the Work ordered by Owner causes an increase or decrease in the Contract Sum or the Contract Time, an equitable adjustment shall be made as provided in Section 7.02 or 7.03, respectively, and such adjustment(s) shall be incorporated into a Change Order.
- B. **Owner may request COP from Contractor:** If Owner desires to order a change in the Work, it may request a written Change Order Proposal (COP) from Contractor. Contractor shall

submit a Change Order Proposal within 14 Days of the request from Owner, or within such other period as mutually agreed. Contractor's Change Order Proposal shall be full compensation for implementing the proposed change in the Work, including any adjustment in the Contract Sum or Contract Time, and including compensation for all delays in connection with such change in the Work and for any expense or inconvenience, disruption of schedule, or loss of efficiency or productivity occasioned by the change in the Work.

- C. **COP Negotiations:** Upon receipt of the Change Order Proposal, or a request for equitable adjustment in the Contract Sum or Contract Time, or both, as provided in Sections 7.02 and 7.03, Owner may accept or reject the proposal, request further documentation, or negotiate acceptable terms with Contractor. Pending agreement on the terms of the Change Order, Owner may direct Contractor to proceed immediately with the Change Order Work. Contractor shall not proceed with any change in the Work until it has obtained Owner's approval. All Work done pursuant to any Owner-directed change in the Work shall be executed in accordance with the Contract Documents.
- D. **Change Order as full payment and final settlement:** If Owner and Contractor reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, such agreement shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of all claims for time and for direct, indirect, and consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to any Work either covered or affected by the Change Order, or related to the events giving rise to the request for equitable adjustment.
- E. **Failure to agree upon terms of Change Order; Final offer and Claims:** If Owner and Contractor are unable to reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, Contractor may at any time in writing, request a final offer from Owner. Owner shall provide Contractor with its written response within 30 Days of Contractor's request. Owner may also provide Contractor with a final offer at

any time. If Contractor rejects Owner's final offer, or the parties are otherwise unable to reach agreement, Contractor's only remedy shall be to file a Claim as provided in Part 8.

- F. **Field Authorizations:** The Owner may direct the Contractor to proceed with a change in the work through a written Field Authorization (also referred to as a Field Order) when the time required to price and execute a Change Order would impact the Project.

The Field Authorization shall describe and include the following:

1. The Scope of work
2. An agreed upon maximum not-to-exceed amount.
3. Any estimated change to the Contract Time
4. The method of final cost determination in accordance with the requirements of Part 7 of the General Conditions
5. The supporting cost data to be submitted in accordance with the requirements of Part 7 of the General Conditions

Upon satisfactory submittal by the Contractor and approval by the Owner of supporting cost data a Change Order will be executed. The Owner will not make payment to the Contractor for Field Authorization Work until that work has been incorporated into an executed Change Order.

## 7.02 CHANGE IN THE CONTRACT SUM

### A. General Application

1. **Contract Sum changes only by Change Order:** The Contract Sum shall only be changed by a Change Order. Contractor shall include any request for a change in the Contract Sum in its Change Order Proposal.
2. **Owner fault or negligence as basis for change in Contract Sum:** If the cost of Contractor's performance is changed due to the fault or negligence of Owner, or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract Sum in

accordance with the following procedure. No change in the Contract Sum shall be allowed to the extent: Contractor's changed cost of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible; the change is concurrently caused by Contractor and Owner; or the change is caused by an act of Force Majeure as defined in Section 3.05.

- a. **Notice and record keeping for equitable adjustment:** A request for an equitable adjustment in the Contract Sum shall be based on written notice delivered to Owner within 7 Days of the occurrence of the event giving rise to the request. For purposes of this part, "occurrence" means when Contractor knew, or in its diligent prosecution of the Work should have known, of the event giving rise to the request. If Contractor believes it is entitled to an adjustment in the Contract Sum, Contractor shall immediately notify Owner and begin to keep and maintain complete, accurate, and specific daily records. Contractor shall give Owner access to any such records and, if requested shall promptly furnish copies of such records to Owner.
- b. **Content of notice for equitable adjustment; Failure to comply:** Contractor shall not be entitled to any adjustment in the Contract Sum for any occurrence of events or costs that occurred more than 7 Days before Contractor's written notice to Owner. The written notice shall set forth, at a minimum, a description of: the event giving rise to the request for an equitable adjustment in the Contract Sum; the nature of the impacts to Contractor and its Subcontractors of any tier, if any; and to the extent possible the amount of the adjustment in Contract Sum requested. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of

Contractor's right to an equitable adjustment.

- c. **Contractor to provide supplemental information:** Within 30 Days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Contractor shall supplement the written notice provided in accordance with subparagraph a. above with additional supporting data. Such additional data shall include, at a minimum: the amount of compensation requested, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that Contractor suffered the damages claimed, but that the damages claimed were actually a result of the act, event, or condition complained of and that the Contract Documents provide entitlement to an equitable adjustment to Contractor for such act, event, or condition; and documentation sufficiently detailed to permit an informed analysis of the request by Owner. When the request for compensation relates to a delay, or other change in Contract Time, Contractor shall demonstrate the impact on the critical path, in accordance with Section 7.03C. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent Owner's interests are-prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.
- d. **Contractor to proceed with Work as directed:** Pending final resolution of any request made in accordance with this paragraph, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work.
- e. **Contractor to combine requests for same event together:** Any requests by Contractor for an

equitable adjustment in the Contract Sum and in the Contract Time that arise out of the same event(s) shall be submitted together.

3. **Methods for calculating Change Order amount:** The value of any Work covered by a Change Order, or of any request for an equitable adjustment in the Contract Sum, shall be determined by one of the following methods:
  - a. **Fixed Price:** On the basis of a fixed price as determined in paragraph 7.02B.
  - b. **Unit Prices:** By application of unit prices to the quantities of the items involved as determined in paragraph 7.02C.
  - c. **Time and Materials:** On the basis of time and material as determined in paragraph 7.02D.
4. **Fixed price method is default; Owner may direct otherwise:** When Owner has requested Contractor to submit a Change Order Proposal, Owner may direct Contractor as to which method in subparagraph 3 above to use when submitting its proposal. Otherwise, Contractor shall determine the value of the Work, or of a request for an equitable adjustment, on the basis of the fixed price method.

**B. Change Order Pricing -- Fixed Price**

**Procedures:** When the fixed price method is used to determine the value of any Work covered by a Change Order, or of a request for an equitable adjustment in the Contract Sum, the following procedures shall apply:

1. **Breakdown and itemization of details on COP:** Contractor's Change Order Proposal, or request for adjustment in the Contract Sum, shall be accompanied by a complete itemization of the costs, including labor, material, subcontractor costs, and overhead and profit. The costs shall be itemized in the manner set forth below, and shall be submitted

- on breakdown sheets in a form approved by Owner.
2. **Use of industry standards in calculating costs:** All costs shall be calculated based upon appropriate industry standard methods of calculating labor, material quantities, and equipment costs.
  3. **Costs contingent on Owner's actions:** If any of Contractor's pricing assumptions are contingent upon anticipated actions of Owner, Contractor shall clearly state them in the proposal or request for an equitable adjustment.
  4. **Markups on additive and deductive Work:** The cost of any additive or deductive changes in the Work shall be calculated as set forth below, except that overhead and profit shall not be included on deductive changes in the Work. Where a change in the Work involves additive and deductive work by the same Contractor or Subcontractor, small tools, overhead, profit, bond and insurance markups will apply to the net difference.
  5. **Breakdown not required if change less than \$1,000:** If the total cost of the change in the Work or request for equitable adjustment does not exceed \$1,000, Contractor shall not be required to submit a breakdown if the description of the change in the Work or request for equitable adjustment is sufficiently definitive for Owner to determine fair value.
  6. **Breakdown required if change between \$1,000 and \$2,500:** If the total cost of the change in the Work or request for equitable adjustment is between \$1,000 and \$2,500, Contractor may submit a breakdown in the following level of detail if the description of the change in the Work or if the request for equitable adjustment is sufficiently definitive to permit the Owner to determine fair value:
    - a. lump sum labor;
    - b. lump sum material;
    - c. lump sum equipment usage;
    - d. overhead and profit as set forth below; and
    - e. insurance and bond costs as set forth below.
  7. **Components of increased cost:** Any request for adjustment of Contract Sum based upon the fixed price method shall include only the following items:
    - a. **Craft labor costs:** These are the labor costs determined by multiplying the estimated or actual additional number of craft hours needed to perform the change in the Work by the hourly labor costs. Craft hours should cover direct labor, as well as indirect labor due to trade inefficiencies. The hourly costs shall be based on the following:
      1. **Basic wages and benefits:** Hourly rates and benefits as stated on the Department of Labor and Industries approved "statement of intent to pay prevailing wages" or a higher amount if approved by the Owner. Direct supervision shall be a reasonable percentage not to exceed 15% of the cost of direct labor. No supervision markup shall be allowed for a working supervisor's hours.
      2. **Worker's insurance:** Direct contributions to the state of Washington for industrial insurance; medical aid; and supplemental pension, by the class and rates established by the

Department of Labor and Industries.

3. **Federal insurance:** Direct contributions required by the Federal Insurance Compensation Act; Federal Unemployment Tax Act; and the State Unemployment Compensation Act.
  4. **Travel allowance:** Travel allowance and/or subsistence, if applicable, shall be consistent with Owner's policy allowing reimbursement or allotment of amounts actual, reasonable, and necessary. Owner's full policy regarding Travel is available on request.
  5. **Safety:** Cost incurred due to the Washington Industrial Safety and Health Act, which shall be a reasonable percentage not to exceed 2% of the sum of the amounts calculated in (1), (2), and (3) above.
- b. **Material costs:** This is an itemization of the quantity and cost of materials needed to perform the change in the Work. Material costs shall be developed first from actual known costs, second from supplier quotations or if these are not available, from standard industry pricing guides. Material costs shall consider all available discounts. Freight costs, express charges, or special delivery charges, shall be itemized.
- c. **Equipment costs:** This is an itemization of the type of equipment and the estimated or actual length of time the construction equipment

appropriate for the Work is or will be used on the change in the Work. Costs will be allowed for construction equipment only if used solely for the changed Work, or for additional rental costs actually incurred by the Contractor. Equipment charges shall be computed on the basis of actual invoice costs or if owned, from the current edition of one of the following sources:

1. Associated General Contractors - Washington State Department of Transportation (AGC WSDOT) Equipment Rental Agreement current edition, on the Contract execution date.
2. The state of Washington Utilities and Transportation Commission for trucks used on highways.
3. The National Electrical Contractors Association for equipment used on electrical work.
4. The Mechanical Contractors Association of America for equipment used on mechanical work.

The EquipmentWatch Rental Rate (Blue Book) shall be used as a basis for establishing rental rates of equipment not listed in the above sources. The maximum rate for standby equipment shall not exceed that shown in the AGC WSDOT Equipment Rental Agreement, current edition on the Contract execution date.

- d. **Allowance for small tools, expendables & consumable supplies:** Small tools consist of tools which cost \$250 or less and are normally furnished by

the performing contractor. The maximum rate for small tools shall not exceed the following:

1. **3% for contractor:** For Contractor, 3% of direct labor costs.
2. **5% for Subcontractors:** For Subcontractors, 5% of direct labor costs.

Expendables and consumables supplies directly associated with the change in Work must be itemized.

- e. **Subcontractor costs:** This is defined as payments Contractor makes to Subcontractors for changed Work performed by Subcontractors of any tier. The Subcontractors' cost of Work shall be calculated and itemized in the same manner as prescribed herein for Contractor.
- f. **Allowance for overhead:** This is defined as costs of any kind attributable to direct and indirect delay, acceleration, or impact, added to the total cost to Owner of any change in the Contract Sum. If the Contractor is compensated under Section 7.03D, the amount of such compensation shall be reduced by the amount Contractor is otherwise entitled to under this subsection (f). This allowance shall compensate Contractor for all noncraft labor, temporary construction facilities, field engineering, schedule updating, as-built drawings, home office cost, B&O taxes, office engineering, estimating costs, additional overhead because of extended time, and any other cost incidental to the change in the Work. It shall be strictly limited in all cases to a reasonable amount, mutually acceptable, or if none can be

agreed upon to an amount not to exceed the rates below:

- (1) **Projects less than \$3 million:** For projects where the Contract Award Amount is under \$3 million, the following shall apply:

- (a) **Contractor markup on Contractor Work:** For Contractor, for any Work actually performed by Contractor's own forces, shall not exceed 16% of the first \$50,000 of the cost, and 4% of the remaining cost, if any.

- (b) **Subcontractor markup for Subcontractor Work:** For each Subcontractor (including lower tier subcontractors), for any Work actually performed by its own forces, shall not exceed 16% of the first \$50,000 of the cost, and 4% of the remaining cost, if any.

- (c) **Contractor markup for Subcontractor Work:** For Contractor, for any work performed by its Subcontractor(s), shall not exceed 6% of the first \$50,000 of the amount due each Subcontractor, and 4% of the remaining amount if any.

- (d) **Subcontractor markup for lower tier Subcontractor Work:** For each Subcontractor, for any Work performed by its Subcontractor(s) of any lower tier, shall not exceed 4% of the first \$50,000 of the amount due the sub-Subcontractor, and 2% of the remaining amount if any.

- (e) **Basis of cost applicable for markup:** The cost to which overhead is to be applied shall be developed in accordance with Section 7.02B 7a.-e.

- (2) **Projects more than \$3 million:** For projects where the Contract Award Amount is equal to or exceeds \$3 million, the following shall apply:

- (a) **Contractor markup on Contractor Work:** For Contractor, for any Work actually performed by Contractor's own forces, shall not exceed 12% of the first \$50,000 of the cost, and 4% of the remaining cost, if any.

- (b) **Subcontractor markup for Subcontractor Work:** For each Subcontractor (including lower tier subcontractors), for any Work actually performed by

its own forces, shall not exceed 12% of the first \$50,000 of the cost, and 4% of the remaining cost, if any.

(c) **Contractor markup for Subcontractor Work:** For Contractor, for any Work performed by its Subcontractor(s), shall not exceed 4% of the first \$50,000 of the amount due each Subcontractor, and 2% of the remaining amount if any.

(d) **Subcontractor markup for lower tier Subcontractor Work:** For each Subcontractor, for any Work performed by its Subcontractor(s) of any lower tier, shall not exceed 4% of the first \$50,000 of the amount due the sub-Subcontractor, and 2% of the remaining amount if any.

(e) **Basis of cost applicable for markup:** The cost to which overhead is to be applied shall be developed in accordance with Section 7.02B 7a.-e.

g. **Allowance for profit:** This Allowance for profit is an amount to be added to the cost of any change in contract sum, but not to the cost of change in Contract Time for which contractor has been compensated pursuant to the conditions set forth in Section 7.03. It shall be limited to a reasonable amount, mutually acceptable, or if none can be agreed upon, to an amount not to exceed the rates below:

1. **Contractor/Subcontractor markup for self-performed Work:** For Contractor or Subcontractor of any tier for work performed by their forces, 6% of the cost developed in accordance with 7.02B 7a.-e.
2. **Contractor / Subcontractor markup for Work performed at lower tier:** For Contractor or Subcontractor of any tier for work performed by a subcontractor of a lower tier, shall not exceed 4%

of the subcontract cost developed in accordance with 7.02B 7a. - h.

h. **Insurance and bond premiums:** Cost of change in insurance or bond premium: This is defined as:

1. **Contractor's liability insurance:** The cost of any changes in Contractor's liability insurance arising directly from execution of the Change Order; and
2. **Payment and Performance Bond:** The cost of the additional premium for Contractor's bond arising directly from the changed Work.

The cost of any change in insurance or bond premium shall be added after overhead and allowance for profit are calculated in accordance with subparagraph f. and g. above.

### C. Change Order Pricing -- Unit Prices

8. **Content of Owner authorization:** Whenever Owner authorizes Contractor to perform Work on a unit-price basis, Owner's authorization shall clearly state:
  - a. **Scope:** Scope of work to be performed;
  - b. **Reimbursement basis:** Type of reimbursement including pre-agreed rates for material quantities; and
  - c. **Reimbursement limit:** Cost limit of reimbursement.
9. Contractor responsibilities: Contractor shall:
  - a. Cooperate with Owner and assist in monitoring the Work being performed. As requested by Owner, Contractor shall identify workers assigned to the

- Change Order Work and areas in which they are working;
- b. Leave access as appropriate for quantity measurement; and
  - c. Not exceed any cost limit(s) without Owner's prior written approval.
10. **Cost breakdown consistent with Fixed Price requirements:**  
Contractor shall submit costs in accordance with Section 7.02B. and satisfy the following requirements:
- a. **Unit prices must include overhead, profit, bond and insurance premiums:** Unit prices shall include reimbursement for all direct and indirect costs of the Work, including overhead, profit, bond, and insurance costs; and
  - b. **Owner verification of quantities:** Quantities must be supported by field measurement statements signed by Owner.
- D. Change Order Pricing -- Time-and-Material Prices
11. **Content of Owner authorization:**  
Whenever Owner authorizes Contractor to perform Work on a time-and-material basis, Owner's authorization shall clearly state:
- a. **Scope:** Scope of Work to be performed;
  - b. **Reimbursement basis:** Type of reimbursement including pre-agreed rates, if any, for material quantities or labor; and
  - c. **Reimbursement limit:** Cost limit of reimbursement.
12. Contractor responsibilities:  
Contractor shall:
- a. **Identify workers assigned:** Cooperate with Owner and assist in monitoring the Work being performed. As requested by Owner, identify workers assigned to the Change Order Work and areas in which they are working;
  - b. **Provide daily timesheets:** Identify on daily time sheets all labor performed in accordance with this authorization. Submit copies of daily time sheets within 2 working days for Owner's review;
  - c. **Allow Owner to measure quantities:** Leave access as appropriate for quantity measurement;
  - d. **Perform Work efficiently:** Perform all Work in accordance with this section as efficiently as possible; and
  - e. **Not exceed Owner's cost limit:** Not exceed any cost limit(s) without Owner's prior written approval.
13. Cost breakdown consistent with Fixed Price requirements: Contractor shall submit costs in accordance with paragraph 7.02B and additional verification supported by:
- a. **Timesheets:** Labor detailed on daily time sheets; and
  - b. **Invoices:** Invoices for material.
- 7.03 CHANGE IN THE CONTRACT TIME
- A. **COP requests for Contract Time:** The Contract Time shall only be changed by a Change Order. Contractor shall include any request for a change in the Contract Time in its Change Order Proposal.
- B. **Time extension permitted if not Contractor's fault:** If the time of Contractor's performance is changed due to an act of Force Majeure, or due to the fault or negligence of Owner or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request

for an equitable adjustment in the Contract Time in accordance with the following procedure. No adjustment in the Contract Time shall be allowed to the extent Contractor's changed time of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible.

1. **Notice and record keeping for Contract Time request:** A request for an equitable adjustment in the Contract Time shall be based on written notice delivered within 7 Days of the occurrence of the event giving rise to the request. If Contractor believes it is entitled to adjustment of Contract Time, Contractor shall immediately notify Owner and begin to keep and maintain complete, accurate, and specific daily records. Contractor shall give Owner access to any such record and if requested, shall promptly furnish copies of such record to Owner.
2. **Timing and content of Contractor's Notice:** Contractor shall not be entitled to an adjustment in the Contract Time for any events that occurred more than 7 Days before Contractor's written notice to Owner. The written notice shall set forth, at a minimum, a description of: the event giving rise to the request for an equitable adjustment in the Contract Time; the nature of the impacts to Contractor and its Subcontractors of any tier, if any; and to the extent possible the amount of the adjustment in Contract Time requested. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.
3. **Contractor to provide supplemental information:** Within 30 Days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Contractor shall supplement the

written notice provided in accordance with subparagraph 7.03B.2 with additional supporting data. Such additional data shall include, at a minimum: the amount of delay claimed, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that Contractor suffered the delay claimed, but that the delay claimed was actually a result of the act, event, or condition complained of, and that the Contract Documents provide entitlement to an equitable adjustment in Contract Time for such act, event, or condition; and supporting documentation sufficiently detailed to permit an informed analysis of the request by Owner. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.

4. **Contractor to proceed with Work as directed:** Pending final resolution of any request in accordance with this paragraph, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work.
- C. **Contractor to demonstrate impact on critical path of schedule:** Any change in the Contract Time covered by a Change Order, or based on a request for an equitable adjustment in the Contract Time, shall be limited to the change in the critical path of Contractor's schedule attributable to the change of Work or event(s) giving rise to the request for equitable adjustment. Any Change Order Proposal or request for an adjustment in the Contract Time shall demonstrate the impact on the critical path of the schedule. Contractor shall be responsible for showing clearly on the Progress Schedule that the change or event: had a specific impact on the critical path, and except in case of concurrent delay, was the sole cause of such impact; and could not have been avoided by resequencing of the Work or other reasonable alternatives.

D. **Cost of change in Contract Time:** Contractor may request compensation for the cost of a change in Contract Time in accordance with this paragraph, 7.03D, subject to the following conditions:

not to exceed 3% of the Contract Award Amount divided by the originally specified Contract Time for each Day of the delay.

1. **Must be solely fault of Owner or A/E:** The change in Contract Time shall solely be caused by the fault or negligence of Owner or A/E;
2. **Procedures:** Contractor shall follow the procedure set forth in paragraph 7.03B;
3. **Demonstrate impact on critical path:** Contractor shall establish the extent of the change in Contract Time in accordance with paragraph 7.03C; and;
4. **Limitations on daily costs:** The daily cost of any change in Contract Time shall be limited to the items below, less the amount of any change in the Contract Sum the Contractor may otherwise be entitled to pursuant to Section 7.02B 7f for any change in the Work that contributed to this change in Contract Time:
  - a. **Non-productive supervision of labor:** cost of nonproductive field supervision or labor extended because of the delay;
  - b. **Weekly meetings and indirect activities:** cost of weekly meetings or similar indirect activities extended because of the delay;
  - c. **Temporary facilities or equipment rental:** cost of temporary facilities or equipment rental extended because of the delay;
  - d. **Insurance premiums:** cost of insurance extended because of the delay;
  - e. **Overhead:** general and administrative overhead in an amount to be agreed upon, but

## Part 8 - CLAIMS AND DISPUTE RESOLUTION

### 8.01 CLAIMS

- A. **A Claim is Contractor's remedy:** If the parties fail to reach agreement on the terms of any Change Order for Owner-directed Work as provided in Section 7.01, on the resolution of any request for an equitable adjustment in the Contract Sum as provided in Section 7.02, the Contract Time as provided in Section 7.03, or any dispute interpretation of the parties respective obligations and duties under the Contract documents Contractor's only remedy shall be to file a Claim with Owner as provided in this section.
- B. **Claim filing deadline for Contractor:** Contractor shall file its Claim within 120 Days from Owner's final offer made in accordance with Section 7.01E or by the date of Final Acceptance, whichever occurs first.
- C. **Claim must cover all costs and be documented:** The Claim shall be deemed to cover all changes in cost and time (including direct, indirect, impact, and consequential) to which Contractor may be entitled. It shall be fully substantiated and documented. At a minimum, the Claim shall contain the following information:
  1. **Factual statement of Claim:** A detailed factual statement of the Claim for additional compensation and time, if any, providing all necessary dates, locations, and items of Work affected by the Claim.
  2. **Dates:** The date on which facts arose that gave rise to the claim.
  3. **Owner and A/E employee's knowledgeable about Claim:** The name of each employee of Owner or A/E knowledgeable about the Claim;
  4. **Support from Contract Documents:** The specific provisions

of the Contract Documents which support the Claim;

5. **Identification of other supporting information:** The identification of any documents and the substance of any oral communications that support the Claim;
  6. **Copies of supporting documentation:** Copies of any identified documents, other than the Contract Documents, that support the Claim;
  7. **Details on Claim for Contract Time:** If an adjustment in the Contract Time is sought: the specific days and dates for which it is sought; the specific reasons Contractor believes an extension in the Contract Time should be granted; and Contractor's analysis of its Progress Schedule to demonstrate the reason for the extension in Contract Time;
  8. **Details on Claim:** for adjustment of Contract Sum: If an adjustment in the Contract Sum is sought, the exact amount sought and a breakdown of that amount into the categories set forth in, and in the detail as required by Section 7.02; and
  9. **Statement certifying Claim:** A statement certifying, under penalty of perjury, that the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of Contractor's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Sum or Contract Time for which Contractor believes Owner is liable.
- D. **Owner's Contracting Officer's response to Claim filed:** After Contractor has submitted a fully documented Claim that complies with all applicable provisions of Parts 7 and 8, Owner's

Contracting Officer shall respond, in writing, to Contractor as follows:

1. **Response time for Claim less than \$50,000:** If the Claim amount is less than \$50,000, with a decision within 60 Days from the date the Claim is received; or
  2. **Response time for Claim of \$50,000 or more:** If the Claim amount is \$50,000 or more, with a decision within 60 Days from the date the Claim is received, or with notice to Contractor of the date by which it will render its decision. Owner will then respond with a written decision in such additional time.
- E. **Contracting Officer's review of Claim and finality of decision:** To assist in the review of Contractor's Claim, Owner's Contracting Officer may visit the Project site, or request additional information, in order to fully evaluate the issues raised by the Claim. Contractor shall proceed with performance of the Work pending final resolution of any Claim. Owner's Contracting Officer's written decision as set forth above shall be final and conclusive as to all matters set forth in the Claim, unless Contractor follows the procedure set forth in Section 8.02.
- F. **Waiver of Contractor rights for failure to comply with this Section:** Any Claim of the Contractor against the Owner for damages, additional compensation, or additional time, shall be conclusively deemed to have been waived by the Contractor unless made in accordance with the requirements of this Section.
- G. **Finality of Owner's Contracting Officer's Decision:** This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Chief Executive Officer ("CEO") of STA. STA CEO review of the Contracting Officer's decision is limited to a review and decision issued on the same record presented to the Contracting Officer.
- H. **Appeal procedure:** In connection with appeal to CEO, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of this

Contract while matters in dispute are being resolved. The final decision of the CEO shall be binding upon the Contractor and the Contractor shall abide by the decision. The only available review is by an arbitrator as provided below and the applicable standard of review is whether the CEO's decision was arbitrary and capricious.

## **8.02 ARBITRATION**

### **A. Timing of Contractor's demand for review of CEO's decision by third-party neutral**

**(arbitration):** If Contractor disagrees with STA's CEO's decision rendered in accordance with paragraph H above, Contractor shall provide Owner with a written demand for review by a third-party neutral (arbitration). No demand for arbitration of any such Claim shall be made later than 30 Days after the date of the CEO's decision on such Claim; failure to demand arbitration within said 30 Days period shall result in the CEO's decision being final and binding upon Contractor and its Subcontractors.

### **B. Selection of the third-party neutral**

**(Arbitrator):** The parties shall mutually select a third-party neutral to review the parties' claims within the confines of the decision issued by the CEO. If the parties are unable to mutually select a third-party neutral, they shall each appoint a neutral and the two appointed neutrals shall agree to the appointment of the third-party neutral who will preside over the matter.

**C. Standard of review:** The arbitrator's review shall be limited to determining whether the CEO acted arbitrarily and capriciously in issuing its decision. Decisions issued under the Administrative Procedures Act may guide the arbitrator in determining whether the CEO acted arbitrarily and capriciously.

**D. Costs of Arbitration:** The costs of arbitration will be borne by the party against whom judgment is issued. To the extent neither party substantially prevails at arbitration, the parties will split equally the costs associated with the arbitration.

**E. Arbitration is forum for resolving Claims other than those identified under Part 8 above:** All Claims arising out of the Work shall be resolved by arbitration. The judgment upon the arbitration award may be entered, or review of the award may occur, in the superior court having jurisdiction thereof. No independent legal action relating to or arising from the Work shall be maintained.

**F. Owner may combine Claims into same arbitration:** Claims between Owner and Contractor, Contractor and its Subcontractors, Contractor and A/E, and Owner and A/E shall, upon demand by Owner, be submitted in the same arbitration or mediation.

**G. Settlement outside of arbitration to be documented in Change Order:** If the parties resolve the Claim prior to arbitration judgment, the terms of the resolution shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of the Claim, including all claims for time and for direct, indirect, or consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity.

#### 8.03 CLAIMS AUDITS

**A. Owner may audit Claims:** All Claims filed against Owner shall be subject to audit at any time following the filing of the Claim. Failure of Contractor, or Subcontractors of any tier, to maintain and retain sufficient records to allow Owner to verify all or a portion of the Claim or to permit Owner access to the books and records of Contractor, or Subcontractors of any tier, shall constitute a waiver of the Claim and shall bar any recovery.

**B. Contractor to make documents available:** In support of Owner audit of any Claim, Contractor shall, upon request, promptly make available to Owner the following documents:

1. Daily time sheets and supervisor's daily reports;
2. Collective bargaining agreements;
3. Insurance, welfare, and benefits records;
4. Payroll registers;
5. Earnings records;
6. Payroll tax forms;

7. Material invoices, requisitions, and delivery confirmations;
8. Material cost distribution worksheet;
9. Equipment records (list of company equipment, rates, etc.);
10. Vendors', rental agencies', Subcontractors', and agents' invoices;
11. Contracts between Contractor and each of its Subcontractors, and all lower-tier Subcontractor contracts and supplier contracts;
12. Subcontractors' and agents' payment certificates;
13. Cancelled checks (payroll and vendors);
14. Job cost report, including monthly totals;
15. Job payroll ledger;
16. Planned resource loading schedules and summaries;
17. General ledger;
18. Cash disbursements journal;
19. Financial statements for all years reflecting the operations on the Work. In addition, the Owner may require, if it deems it appropriate, additional financial statements for 3 years preceding execution of the Work;
20. Depreciation records on all company equipment whether these records are maintained by the company involved, its accountant, or others;
21. If a source other than depreciation records is used to develop costs for Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents;
22. All nonprivileged documents which relate to each and every Claim together with all documents which support the amount of any adjustment in Contract Sum or Contract Time sought by each Claim;
23. Work sheets or software used to prepare the Claim establishing the

cost components for items of the Claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractors, all documents which establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals; and

24. Work sheets, software, and all other documents used by Contractor to prepare its bid.

C. **Contractor to provide facilities for audit and shall cooperate:** The audit may be performed by employees of Owner or a representative of Owner. Contractor, and its Subcontractors, shall provide adequate facilities acceptable to Owner, for the audit during normal business hours. Contractor, and all Subcontractors, shall make a good faith effort to cooperate with Owner's auditors.

## Part 9 - TERMINATION OF THE WORK

### 9.01 TERMINATION BY OWNER FOR CAUSE

A. **7 Day Notice to Terminate for Cause:** Owner may, upon 7 Days written notice to Contractor and to its surety, terminate (without prejudice to any right or remedy of Owner) the Work, or any part of it, for cause upon the occurrence of any one or more of the following events:

1. **Contractor fails to prosecute Work:** Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure Substantial Completion of the Work within the Contract Time;
2. Contractor bankrupt: Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency;
3. Contractor fails to correct Work: Contractor fails in a material way to replace or correct Work not in conformance with the Contract Documents;
4. Contractor fails to supply workers or materials: Contractor repeatedly fails to supply skilled workers or proper materials or equipment;

5. Contractor failure to pay Subcontractors or labor: Contractor repeatedly fails to make prompt payment due to Subcontractors or for labor;
6. Contractor violates laws: Contractor materially disregards or fails to comply with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction; or
7. Contractor in material breach of Contract: Contractor is otherwise in material breach of any provision of the Contract Documents.

B. **Owner's actions upon termination:** Upon termination, Owner may at its option:

1. **Take possession of Project site:** Take possession of the Project site and take possession of or use all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor to maintain the orderly progress of, and to finish, the Work;
2. **Accept assignment of Subcontracts:** Accept assignment of subcontracts pursuant to Section 5.20; and
3. **Finish the Work:** Finish the Work by whatever other reasonable method it deems expedient.

C. **Surety's role:** Owner's rights and duties upon termination are subject to the prior rights and duties of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.

D. **Contractor's required actions:** When Owner terminates the Work in accordance with this section, Contractor shall take the actions set forth in paragraph 9.02B, and shall not be entitled to receive further payment until the Work is accepted.

E. **Contractor to pay for unfinished Work:** If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including compensation for A/E's services and expenses made necessary thereby and any other extra costs or damages incurred by Owner in

completing the Work, or as a result of Contractor's actions, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor shall pay the difference to Owner. These obligations for payment shall survive termination.

- F. **Contractor and Surety still responsible for Work performed:** Termination of the Work in accordance with this section shall not relieve Contractor or its surety of any responsibilities for Work performed.
- G. **Conversion of "Termination for Cause" to "Termination for Convenience":** If Owner terminates Contractor for cause, and it is later determined that none of the circumstances set forth in paragraph 9.01A exist, then such termination shall be deemed a termination for convenience pursuant to Section 9.02.

9.02 TERMINATION BY OWNER FOR CONVENIENCE

- A. **Owner Notice of Termination for Convenience:** Owner may, upon written notice, terminate (without prejudice to any right or remedy of Owner) the Work, or any part of it, for the convenience of Owner.
- B. **Contractor response to termination Notice:** Unless Owner directs otherwise, after receipt of a written notice of termination for either cause or convenience, Contractor shall promptly:
  - 1. **Cease Work:** Stop performing Work on the date and as specified in the notice of termination;
  - 2. **No further orders or Subcontracts:** Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not terminated;
  - 3. **Cancel orders and Subcontracts:** Cancel all orders and subcontracts, upon terms acceptable to Owner, to the extent that they relate to the performance of Work terminated;
  - 4. **Assign orders and Subcontracts to Owner:** Assign to Owner all of the

right, title, and interest of Contractor in all orders and subcontracts;

- 5. **Take action to protect the Work:** Take such action as may be necessary or as directed by Owner to preserve and protect the Work, Project site, and any other property related to this Project in the possession of Contractor in which Owner has an interest; and
- 6. **Continue performance not terminated:** Continue performance only to the extent not terminated.
- 7. **Owner's Property.** If the Contractor has any property in its possession belonging to STA, the Contractor will account for the same, and return it to STA or dispose of it in the manner STA directs.

- C. **Terms of adjustment in Contract Sum if Contract Terminated:** If Owner terminates the Work or any portion thereof for convenience, Contractor shall be entitled to make a request for an equitable adjustment for its reasonable direct costs incurred prior to the effective date of the termination, plus a reasonable allowance for overhead and profit on Work performed prior to termination, plus the reasonable administrative costs of the termination, but shall not be entitled to any other costs or damages, whatsoever, provided however, the total sum payable upon termination shall not exceed the Contract Sum reduced by prior payments. Contractor shall be required to make its request in accordance with the provisions of Part 7.
- D. **Owner to determine whether to adjust Contract Time:** If Owner terminates the Work or any portion thereof for convenience, the Contract Time shall be adjusted as determined by Owner.

Part 10 MISCELLANEOUS PROVISIONS

10.01 GOVERNING LAW

**Applicable law and venue:** The Contract Documents and the rights of the parties herein shall be governed by the laws of the state of Washington. Venue shall be in the Superior Court of Spokane County, Washington.

## 10.02 SUCCESSORS AND ASSIGNS

### **Bound to successors; Assignment of Contract:**

Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party shall assign the Work without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations set forth in the Contract Documents.

## 10.03 MEANING OF WORDS

**Meaning of words used in Specifications:** Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall be to the latest standard specification, manual, or code in effect on the date for submission of bids, except as may be otherwise specifically stated. Wherever in these Drawings and Specifications an article, device, or piece of equipment is referred to in the singular manner, such reference shall apply to as many such articles as are shown on the drawings, or required to complete the installation.

## 10.04 RIGHTS AND REMEDIES

**No waiver of rights:** No action or failure to act by Owner or A/E shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall action or failure to act constitute approval or an acquiescence in a breach therein, except as may be specifically agreed in writing.

## 10.05 CONTRACTOR REGISTRATION

### **Contractor must be registered or licensed:**

Pursuant to RCW 39.06, Contractor shall be registered or licensed as required by the laws of the State of Washington, including but not limited to RCW 18.27.

## 10.06 TIME COMPUTATIONS

**Computing time:** When computing any period of time, the day of the event from which the period of

time begins shall not be counted. The last day is counted unless it falls on a weekend or legal holiday, in which event the period runs until the end of the next day that is not a weekend or holiday.

## 10.07 RECORDS RETENTION

**Six year records retention period:** The wage, payroll, and cost records of Contractor, and its Subcontractors created or used for the Project, shall be retained for a period of not less than 6 years after the date of Final Acceptance.

## 10.08 THIRD-PARTY AGREEMENTS

**No third party relationships created:** The Contract Documents shall not be construed to create a contractual relationship of any kind between: A/E and Contractor; Owner and any Subcontractor, or any persons other than Owner and Contractor.

## 10.09 ANTITRUST ASSIGNMENT

### **Contractor assigns overcharge amounts to Owner:**

Owner and Contractor recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, Contractor hereby assigns to Owner any and all claims for such overcharges as to goods, materials, and equipment purchased in connection with the Work performed in accordance with the Contract Documents, except as to overcharges which result from antitrust violations commencing after the Contract Sum is established and which are not passed on to Owner under a Change Order. Contractor shall put a similar clause in its Subcontracts, and require a similar clause in its sub-Subcontracts, such that all claims for such overcharges on the Work are passed to Owner by Contractor.

## 10.10 HEADINGS AND CAPTIONS

**Headings for convenience only:** All headings and captions used in these General Conditions are only for convenience of reference, and shall not be used in any way in connection with the meaning, effect, interpretation, construction, or enforcement of the General Conditions, and do not define the limit or describe the scope or intent of any provision of these General Conditions.

Spokane Transit Authority Public Works Construction Project  
Special Conditions  
Public Works Contract # 13-STA-472

1. LABOR PROVISIONS - NONCONSTRUCTION CONTRACTS

- A. Overtime Requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which they are employed on such work to work in excess of forty hours per week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.
- B. Liability for Unpaid Wages and Liquidated Damages. In the event of any violation of the clause set forth in subparagraph (b)(1) of 29 CFR § 5.5, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages and applicable liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (b)(1) of 29 CFR § 5.5 in the sum of \$10 each for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (b)(1) of 29 CFR § 5.5.
- C. Withholding for Unpaid Wages and Liquidated Damages. The U.S. Department of Transportation (DOT) or STA shall, upon its own action or upon written request of an authorized representative of the DOT, withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor under this contract or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (b)(2) of 29 CFR § 5.5.
- D. Nonconstruction Grants. The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- E. Subcontracts. The Contractor or subcontractor shall insert in any subcontract the clauses set forth in subparagraphs A through E of this section, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs A through E of this section.

2. CONFLICT OF INTEREST

No employee, officer, or agent of STA shall participate in selection, or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- A. the employee, officer, or agent;
- B. any member of his immediate family;

- C. his or her partner; or
- D. an organization which employs, or is about to employ an employee, officer, or agent of STA has a financial or other interest in the firm, Contractor or subcontractor selected for award.

3. EMPLOYEE SOLICITATION

Vendor, without the consent of STA, shall not directly or indirectly solicit, influence, entice or hire or attempt to solicit, influence, entice or hire any employee of STA to: (a) cease employment with STA; or (b) do business related to a business connected with the Vendor's business during this Agreement and for a period of three (3) years from the date on which the Agreement terminates, or the work is accepted by STA, whichever is earlier. STA's employee shall be deemed to be related to or connected with a Vendor if such STA employee becomes (a) a partner in a general or limited partnership or employee of a partnership, (b) a shareholder, officer, employee or director of a corporation, member, consultant or agent for the Vendor or any of Vendor's affiliates, subsidiaries or connected business. This subparagraph shall survive the termination of this Agreement. This Agreement is not restricted to any geographical area.

Vendor recognizes and acknowledges that STA's employees may receive training and other benefits from the contractual relationship with STA because of STA's assignment of employees to work in connection with Vendor's contract. Vendor agrees the restrictions on soliciting, influencing, enticing or hiring STA employees are reasonable.

4. "MOST FAVORED NATION" STATUS

The Vendor represents and warrants that the cost of goods and services provided and the hourly and overhead rates that it will charge to STA are no greater than the costs and rates charged to any other public entity for a Federally funded project for similar services.

Spokane Transit Authority Public Works Construction Project  
Supplemental Conditions  
Public Works Contract # 13-STA-472

**The following Supplemental Conditions are in addition to the General Conditions for Spokane Transit Authority Public Works Construction Projects and shall be complied with and interpreted as if contained therein.**

1. FEDERAL REQUIREMENTS AND CHANGES

The Contractor shall at all times comply with all applicable Federal Transit Administration (FTA) regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement (Form FTA MA (19) dated October 1, 2012; available at [www.fta.dot.gov/documents/19-Master.doc](http://www.fta.dot.gov/documents/19-Master.doc)) between STA and FTA, as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.

2. RECYCLED PRODUCTS/RECOVERED MATERIALS

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

3. ENERGY CONSERVATION

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC § 6321 et seq.).

4. CLEAN AIR AND WATER REQUIREMENTS

The Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15) which prohibit the use of nonexempt federal contracts, grants or loans, of facilities included on the EPA List for Violating Facilities. The Contractor agrees to report each violation to STA and understands and agrees that STA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

5. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

- A. Policy: It is the policy of the Department of Transportation and STA that Disadvantaged Business Enterprises, as defined in 49 CFR, Part 26, shall have equal access to participation in the performance of contracts financed in whole or part with Federal funds under the Contract Documents.
- B. DBE Obligations: The Contractor and its subcontractors agree to make good faith efforts to ensure that disadvantaged businesses have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole, or in part, with Federal funds provided under this contract. In this regard, the Contractor shall make a good faith effort to ensure that disadvantaged businesses have an equal opportunity to compete for and perform contracts.
- C. The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26

in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out these requirements and the requirements of this section is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

- D. DBE Liaison: STA has designated a DBE Liaison to assist disadvantaged business enterprises and has the authority to administer STA's DBE program. Inquiries and requests concerning STA's DBE program and information for certification by the STA shall be directed to:

DBE Liaison  
Spokane Transit Authority  
1230 W. Boone  
Avenue, Spokane, WA, 99201, (509) 325-6032

- E. DBE Delegation and Assignment: If a DBE subcontractor is unable to perform the work contracted for, the prime contractor must either replace the subcontractor with another DBE or show STA that good faith efforts to do so have been made. Failure by the prime contractor to comply may result in monetary penalties and partial or total termination for default with resolicitation costs to the prime contractor or its bond.
- F. Contractor Reporting Requirements: STA shall use the Prime contractor's commitment to DBE subcontractor participation submitted with its bids as the prime contractor's goal for the contract. However, the prime contractor shall not be credited with DBE participation until actual payment has been made to the DBE subcontractors involved. Therefore, contractors shall be required to submit with each payment request the amounts earned by DBE subcontractors and to be paid to DBE subcontractors upon STA's progress payment. In addition, prime contractors shall be required to submit verification of receipt of previous payments by DBE subcontractors. Upon receipt of payment verification, prime contractors shall receive credit against their goal. STA will require prime contractors to maintain records and documents of payments to DBE's for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of STA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

STA will keep a record of payments to DBE firms for work committed to them at the time of contract award. STA may also perform audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

The Contractor agrees to use his/her best efforts to carry out a policy in the award of subcontracts, agent agreements, and procurement contracts which will, to the fullest extent, utilize disadvantaged business enterprises consistent with the efficient performance of the contract.

6. REGULATIONS PURSUANT TO THE COPELAND "ANTI-KICKBACK ACT"

The Contractor shall comply with the applicable regulations of the Secretary of Labor, U.S. Department of Labor, made pursuant to the so-called "Anti-Kickback Act" of June 13, 1934, (48 Stat. 948; 62 Stat. 862; Title 18 U.S.C. § 874; and Title 40 U.S.C. § 276c), and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontracts to ensure compliance therewith by all subcontractors subject thereto, and shall be responsible for the submission of affidavits required by subcontractors thereunder, except as said Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirements thereof.

7. ACCESS TO RECORDS

The Contractor agrees to provide STA, the FTA Administrator, the Secretary of Transportation, the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his/her authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined in 49 U.S.C. 5302 (a)1, which is receiving

federal financial assistance through the programs described at 49 U.S.C. 5307, 5309, or 5311. The Contractor also agrees to permit any of the foregoing parties (at their costs) to reproduce by any means whatsoever any excerpts and transcriptions as reasonably needed, and to permit said parties to interview Contractor's employees during work hours on the job.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case the Contractor agrees to maintain same until STA, the FTA Administrator, the Secretary of Transportation, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

#### 8. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

STA and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to STA, the Contractor, or any other party (whether or not a party to this contract) pertaining to any matter resulting from this contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### 9. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this procurement. Upon execution of this contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this contract or the FTA assisted project for which this contract is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. §5307, the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307 (n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

#### 10. FEDERAL PRIVACY ACT REQUIREMENTS

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. §552(a). The Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this contract.

The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

#### 11. INCORPORATION OF FTA TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT. All the contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Contract Documents. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any STA requests which would cause STA to be in violation of the FTA terms and conditions.

#### 12. SUSPENSION AND DEBARMENT

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Spokane Transit. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Spokane Transit, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### 13. BUY AMERICA REQUIREMENTS

If applicable, the Offeror and (if selected) Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Offeror/Contractor certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

#### 14. LABOR PROVISIONS – DAVIS- BACON ACT REQUIREMENTS FOR CONSTRUCTION CONTRACTS

Work performed under this Project is subject to the federal Davis-Bacon Wages requirements as follows.

##### A. Minimum wages

1. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of this section; also, regular contributions

made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

2. Classifications

- a. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
  - (i) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (ii) The classification is utilized in the area by the construction industry; and
  - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
  - (iv) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- b. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- c. In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- d. The wage rate (including fringe benefits where appropriate) determined pursuant to this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

3. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
4. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
5. Additional Classifications
  - a. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
    - (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
    - (ii) The classification is utilized in the area by the construction industry; and
    - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
  - b. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
  - c. In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
  - d. The wage rate (including fringe benefits where appropriate) determined pursuant to this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

#### B. Withholding

STA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered

necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, STA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### C. Payrolls and basic records

1. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2)(b) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b) (2)(b) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
2. The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to Spokane Transit Authority for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
3. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
  - a. That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
  - b. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
  - c. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

4. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by this section.
5. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
6. The contractor or subcontractor shall make the records required under this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

D. Apprentices and trainees –

1. Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
2. Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a

percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

3. Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- E. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
  - F. Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
  - G. Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
  - H. Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
  - I. Certification of eligibility
    1. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
    2. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
    3. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

# APPENDIX A

Contract No. \_\_\_\_\_

**FA**

AGENCY \_\_\_\_\_

PROJECT TITLE \_\_\_\_\_

CONSTRUCTION **FIELD AUTHORIZATION**

TO: \_\_\_\_\_ DATE \_\_\_\_\_  
When authorized by Owner, you are directed to proceed with work as described below and/or detailed on the attachments referred hereto:

WORK DESCRIPTION AND MAXIMUM COST

REASON FOR CHANGE \_\_\_\_\_

CHANGE ORIGINATED BY \_\_\_\_\_  
(name) (company)

It is our opinion that this work will result in a change to the contract. You are authorized as follows:

INCREASE TO THE CONTRACT AMOUNT WITHIN THE MAXIMUM COST OF:  
 NO CHANGE  
 DECREASE \_\_\_\_\_ \$

CONTRACT COMPLETION DATE:  INCREASE  NO CHANGE  DECREASE OF \_\_\_\_\_ CALENDAR DAYS

Payment for work authorized by this FA will not be made prior to incorporation of this FA into a Change Order.

DATE COST DATA REQUIRED BY \_\_\_\_\_ (DATE).

Cost data required by one of the following methods in accordance with the General and Supplemental Conditions.

COST COLLECTION

UNIT PRICE \_\_\_\_\_  
(Method of Measurement)

DETAILED COST BREAKDOWN

ACTUAL COST: T&M with daily work sheets that list the name, trade, firm, hours, itemized materials, equipment and other job related costs. Contractor must obtain verification of hours from \_\_\_\_\_ within \_\_\_\_\_ days from the day work was performed. (Owner's Rep.)

The above amount covers the maximum amount required in connection with the change.

DIRECTION TO PROCEED

ACCEPTED BY \_\_\_\_\_ CONTRACTOR DATE \_\_\_\_\_

We have carefully examined this proposal and find the maximum cost to be reasonable.

APPROVED BY \_\_\_\_\_ A/E DATE \_\_\_\_\_

FUNDING VERIFICATION BY \_\_\_\_\_ PM DATE \_\_\_\_\_

AUTHORIZED BY \_\_\_\_\_ Owner DATE \_\_\_\_\_

The final cost breakdown has been examined and is reasonable.

COST VERIFICATION \_\_\_\_\_ PM DATE \_\_\_\_\_

CONTRACT **CHANGE ORDER**

CONTRACT NO. \_\_\_\_\_  
 AGENCY \_\_\_\_\_  
 PROJECT TITLE \_\_\_\_\_  
**CO** \_\_\_\_\_  
 COP No. \_\_\_\_\_

PROPOSAL REQUEST

TO: \_\_\_\_\_ CONTRACTOR \_\_\_\_\_ PROPOSAL REQUEST DATE \_\_\_\_\_  
 You are directed to prepare a cost proposal for the work described below and/or detailed on the attachments referred to:  
 REASON FOR CHANGE \_\_\_\_\_  
 DATE PROPOSAL REQUIRED \_\_\_\_\_ CHANGE ORIGINATED BY \_\_\_\_\_  
 PROPOSAL REQUESTED BY \_\_\_\_\_

CONTRACTOR PROPOSAL

WE PROPOSE TO PERFORM ALL CHANGES DESCRIBED IN THE PROPOSAL REQUEST FOR:  
 TO: \_\_\_\_\_ (A/E) TO: \_\_\_\_\_ PM (E&AS)  
 CONTRACT PRICE CHANGE:  NO CHANGE  INCREASE  DECREASE  
 OF \_\_\_\_\_  
(Washington State Sales Tax Not Included)  
 In accordance with the General Conditions, Cost Estimate Detail Sheet(s) are attached hereto  
 CONTRACT COMPLETION DATE:  NO CHANGE  INCREASE  DECREASE OF \_\_\_\_\_ CALENDAR DAYS  
 The foregoing amount covers everything required in connection with the change. All other provisions of the contract remain in full force and effect.  
 We understand that work shall not begin prior to authorization.  
 \_\_\_\_\_ CONTRACTOR BY \_\_\_\_\_ DATE \_\_\_\_\_

RECOMMEND

TO: \_\_\_\_\_  
 We have carefully examined this proposal and find the cost to be reasonable. Therefore, we recommend acceptance.  
 \_\_\_\_\_ DATE \_\_\_\_\_ PM \_\_\_\_\_ DATE \_\_\_\_\_

AUTHORIZATION

CONTRACT SUMMARY (BY E&AS)  
 ORIGINAL CONTRACT SUM \_\_\_\_\_ PREVIOUS TOTAL \_\_\_\_\_  
 PREVIOUS ADDITIONS \_\_\_\_\_ CHANGE AMOUNT \_\_\_\_\_  
 PREVIOUS DEDUCTIONS \_\_\_\_\_ **NEW TOTAL** \_\_\_\_\_  
 NEW CONTRACT COMPLETION DATE \_\_\_\_\_ DAYS PERCENT CHANGE FROM ORIGINAL CONTRACT AMOUNT \_\_\_\_\_  
 The final amount of this change order differs from the cost proposal. Invoices incorporating this change order constitutes acceptance by the contractor as total reimbursement due in connection with this change order.  
 The State of Washington hereby accepts the foregoing proposal and authorizes the performance of the changes specified. This constitutes a change order to the contract only when authorizing signature is affixed.  
 \_\_\_\_\_ AUTHORIZING SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_



REQUEST FOR INFORMATION (RFI)

Project: \_\_\_\_\_

R.F.I. Number: \_\_\_\_\_

To: \_\_\_\_\_

From: \_\_\_\_\_

Re: \_\_\_\_\_

Date: \_\_\_\_\_

A/E Project No. \_\_\_\_\_

Contract For: \_\_\_\_\_

Specification Section: \_\_\_\_\_ Paragraph: \_\_\_\_\_ Drawing Reference: \_\_\_\_\_ Detail: \_\_\_\_\_

Request: \_\_\_\_\_

Signed by: \_\_\_\_\_

Date: \_\_\_\_\_

Response:

Attachments

Response From: \_\_\_\_\_ To: \_\_\_\_\_ Date Rec'd: \_\_\_\_\_ Date Ret'd: \_\_\_\_\_

Signed by: \_\_\_\_\_

Date: \_\_\_\_\_

Cc:  Owner  Consultants \_\_\_\_\_  \_\_\_\_\_  \_\_\_\_\_  File