



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

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

**INVITATION FOR BID # 2020-10472**

**FOR: Lighted Pit Repair**

**ISSUE DATE: April 15, 2020**

---

Section Title

**DIVISION 0: SPECIAL SECTIONS**

001100	Advertisement
002100	Instructions to Bidders
003100	Project Description and Scope of Work
004200	Bid Submittal Checklist
004213	Bid Proposal Form
004215	STA Bid Response
004512	Bidder Responsibility Criteria
004546.E	Certificate of Wage Compliance
005200	STA Form of Contract Between Owner and Contractor
007200.1	Public Works General Conditions
007300	Special Conditions For Spokane Transit Authority Facility Construction
007346.1	State Prevailing Wage (Spokane County)

END OF TABLE OF CONTENTS

## ADVERTISEMENT FOR BIDS

Sealed bid proposals will be accepted for the following project:

PROJECT NO.: 2020-10472

TITLE: Lighted Pit Repair

AGENCY: Spokane Transit Authority

PROJECT MANAGER: Jessica Charlton, Project Manager

**PRE-BID MEETING:** **10:00 AM., Wednesday April 22, 2020 Spokane Transit Authority (Owner)**  
**\*1230 W. Boone Avenue, Spokane, WA 99201**

**PUBLIC BID OPENING:** **3:00 P.M., Tuesday May 5, 2020**  
**Spokane Transit Authority (Owner)**  
**1230 W Boone Avenue, Spokane, WA 99201**

Contractors may obtain electronic copies of plans and specifications from the Project Manager, Jessica Charlton by phone at (509)325-6049 or email at [jcharlton@spokanetransit.com](mailto:jcharlton@spokanetransit.com). Plans and specifications may also be viewed at several local plan centers.

The minimum prevailing wage provisions for Washington State law apply to this locally funded project.

Use of DBE/MBE/WBE/MWBE contractors and suppliers is encouraged but 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 Owner reserves the right to reject or accept any or all bids and to waive minor informalities in the process. No contractor submitting may withdraw his or her bids after hour set for opening thereof unless contract award is delayed for a period exceeding ninety (90) days.

STA is an Equal Employment Opportunity (EEO) organization which does not discriminate against any prospective supplier on the basis of race, color, creed, national origin, sex, sexual orientation, gender identity, or presence of any sensory, mental, or physical disability in the consideration of contract award. The successful proposer will be required to comply with all EEO federal, state, and local laws and regulations.

Spokane Transit assures nondiscrimination in accordance with Title VI of the Civil Rights Act of 1964. For more information, see [www.spokanetransit.com](http://www.spokanetransit.com).

Upon request, alternative formats of this information will be produced for people who are disabled. The meeting facility is accessible for people using wheelchairs. For other accommodations, please call (509) 325-6094 (TTY WA Relay 711) or email [ombudsman@spokanetransit.com](mailto:ombudsman@spokanetransit.com) at least forty-eight (48) hours in advance.

\*All distancing requirements and other recommendations/guidance from the CDC and the SRHD will be enforced\*

SECTION 002100 – INSTRUCTIONS TO BIDDERS

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 solicitation documents by identifying additions, deletions, clarifications or corrections.
- B. **Alternate** or **Alternate Bid** 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 solicitation documents is accepted.
- C. **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.
- 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. **Bid** is the submission of a complete and properly signed Bid Proposal Form together with a bid guarantee, when applicable, and the certifications and representations required to comply with this solicitation.
- F. **Bidder** is one who submits a Bid for a Contract with the Owner for the Work described in the construction documents.
- G. **Bid Proposal Form** is the form provided in Section 004213 of this solicitation.
- H. **Contract** is the formal written executed agreement between Owner and Contractor authorizing Contractor to perform the Work in accordance with the Contract Documents.
- I. **Contractor** is the Bidder who has been awarded a Contract to perform the Work in accordance with the Contract Documents.
- J. **Contract Documents** means the Advertisement for Bids, Instructions to Bidders, executed Bid Proposal Form and Bidder certifications, Contract, General Conditions, Modifications to the General Conditions, Supplemental Conditions, Federal Terms & Conditions, Drawings, Specifications, any addenda and/or modifications thereof, any or all supporting documentation required by the above, special forms, or as requested by Owner.
- K. **Federal Assistance** means project funding provided, in whole or in part, by the US Department of Transportation, Federal Transit Administration (“FTA”).
- L. **Non-responsive Bid** means any Bid which fails to conform in all respects to the material requirements of this solicitation, imposes conditions which would modify requirements of this solicitation, or would limit a Bidder's liability to the Owner so as to give the Bidder an advantage over other Bidders as determined by the Owner.
- M. **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.
- N. **Responsible Bidder** means a contractor who meets the criteria listed in RCW 39.04.350.
- O. **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.

PART 1 - GENERAL

1.1 INTRODUCTION

- A. Scope of Work. The general description and scope of work for the project can be found in Section 003100 of this solicitation.
- B. Schedule. Work may begin when the Contractor receives a formal “Notice to Proceed.” Contractor must start and finish one pit at a time in order to allow for STA’s work to continue in the other two pits. Contractor shall proceed with promptness and dispatch and shall complete the project within 45 calendar days beginning on the day of commencement as stated in a Notice to Proceed.
- C. Liquidated Damages. The Contractor agrees to pay to STA liquidated damages in the amount of \$300.00 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.
- D. Public Records. Materials submitted in response to this competitive procurement shall become the property of Spokane Transit Authority. All received Bids shall be deemed public records as defined in Chapter 42.56 RCW *Public Records Act*. Any information in the Bid that the Bidder desires to claim as confidential and exempt from disclosure under the provisions of state law shall be clearly designated as “Confidential”. Each page claimed to be exempt from disclosure must be clearly identified by the word “Confidential” printed on it. Marking the entire Bid exempt from disclosure will not be honored. STA will consider a Bidder’s request for exemption from disclosure; however, STA will make a decision predicated upon state law and regulations. If any information is marked as Confidential in the Bid, it will not be made available until the affected Bidder has been given a reasonable opportunity to seek a court injunction against the requested disclosure. STA assumes no liability for disclosure of Confidential material submitted by Bidders. Bid submittals shall be considered public documents under applicable Washington state law and shall be available for inspection and copying by the public, except to the extent portions of the submittals are otherwise protected under applicable law. Each Bidder will be responsible for protecting any disclosure of its submittal under applicable law.
- E. Request for Information. Any prospective Bidder desiring an explanation or interpretation of this solicitation, drawings, specifications, etc., must submit a request in writing to the Owners representative seven (7) calendar days before the bid due date. Oral explanations or instructions given before the award of Contract will not be binding. Any information given a prospective Bidder concerning a solicitation will be furnished promptly to all other prospective Bidders 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 Bidders.
- F. Disadvantaged Business Enterprise. 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 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 solicitation 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.

## 1.2 PREPARATION OF BIDS – CONSTRUCTION

- A. Bids must be: (1) submitted on the Bid Proposal Form, or copies thereof, furnished by Owner or Owner’s agent, and (2) signed in ink. The person signing a Bid must initial each change appearing on any Bid Proposal Form. If the Bid is made by a corporation, it shall be signed by the corporation’s authorized designee. The address of the Bidder shall be typed or printed on the bid form in the space provided.
- B. The Bid Proposal Form may require Bidders to submit bid prices for one or more items on a varying basis, 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 price on any Alternates may disqualify the Bid. If bidding on all items is not required, Bidders 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.

## 1.3 BID PRICES

- A. The bid prices shown for each item on the Bid Proposal Form shall include all labor, material, equipment, overhead and compensation 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 Bidder in the bid amount.
- C. The Bidder agrees to hold all Bid prices for ninety (90) days from date of bid opening.

## 1.4 ADDITIVE OR DEDUCTIVE BID ITEMS

- A. The low Bidder, for purposes of award, shall be the responsive Bidder offering the low aggregate amount for the Base Bid, plus Alternates selected by the Owner, and within funds available for the project.
- B. The Bidder agrees to hold all Alternate prices for ninety (90) days from date of bid opening.

## 1.5 TAXES

- A. Bid prices shall not include Washington State Sales Tax (“WSST”). However, all other taxes imposed by law shall be included in Bid prices. The Owner will include WSST in progress payments. The Contractor shall remit applicable WSST to the Department of Revenue and shall furnish proof of remittance to the Owner if requested.
- B. NOTE: Contractor must bond for total contract amount including WSST.

## 1.6 BID GUARANTEE

- A. When the sum of the Base Bid plus all Alternates is \$35,000.00 or less, a bid guarantee is not required. When the sum of the Base Bid plus all Alternates is greater than \$35,000.00, a bid guarantee in the amount of five percent (5%) of the Base Bid amount is required. Failure of the Bidder to provide a bid guarantee when required shall render the Bid non-responsive.
- B. Acceptable forms of bid guarantee are: A bid bond, U. S. 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 Bidders as soon as practicable, but not sooner than the execution of a contract with the successful Bidder. The bid guarantee of the successful Bidder will be returned to the successful Bidder with its official notice to proceed with the Work.
- C. The Bidder will allow ninety (90) days from the bid opening date for acceptance of its Bid by the Owner. The Bidder will return to Owner a signed Contract, insurance certificate and requisite bond(s) or bond waiver within fifteen (15) days after receipt of the Contract. If the apparent successful Bidder fails to sign all contract documents, provide the bond and insurance as required, or return the documents within fifteen (15) days after receipt of the Contract, the Owner may terminate the award of the Contract.
- D. In the event a Bidder discovers an error in its Bid following the bid opening, the Bidder may request to withdraw its Bid under the following conditions:
  1. Written notification is received by the Owner within twenty-four (24) hours following bid opening.
  2. The Bidder provides written documentation of the claimed error to the satisfaction of the Owner within seventy-two (72) hours following the bid opening.

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

## 1.7 ACKNOWLEDGEMENT OF ADDENDA

Bidders 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.

## 1.8 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

- A. The Bidder 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 Bidder 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 solicitation. Any failure of the Bidder to take the actions described and acknowledged in this paragraph will not relieve the Bidder 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 Bidders that have not either attended a pre-bid meeting or inspected the sites in the presence of STA staff will be considered non-responsive.**

#### 1.9 PREVAILING WAGE

- A. The Work for this project constitutes a public work under RCW 39.04 *Public Works*. In accordance with RCW 39.12 *Prevailing Wages on Public Works*, the Contractor shall pay the highest prevailing wage rate by trade or occupation as specified by the State of Washington, Department of Labor and Industries.

#### 1.10 SUBMISSION OF BIDS

- A. Bids must be submitted on or before the time specified in the Advertisement for Bids or as extended by written addenda to this solicitation.
- B. Bids shall be submitted in a sealed envelope addressed to the office specified in the Advertisement for Bids. Oral, telephonic, electronic or 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 Bidder.
  - 3. Identification as Bid Proposal.
- C. Prior to the bid opening, the Owner's representative will designate the official bid clock. Any part of the Bid 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 Bidder unopened.
- D. A Bid may be withdrawn in person by the authorized representative of the Bidder before bid opening. The representative of the Bidder will be required to show ID and sign the bid summary sheet before the Bid will be released to Bidder.
- E. Individuals with disabilities who wish to request special accommodation, (e.g., sign language interpreters, Braille, etc.) need to contact the Owner ten (10) working days prior to the scheduled bid opening.

#### 1.11 CONSIDERATION OF BIDS

- A. Owner shall have the right to reject any or all Bids, to reject Bids considered non-responsive, including but not limited to, Bids not accompanied by any required bid guarantee, Bidder certifications or data required by the solicitation, or a Bid not signed by the Bidder's authorized 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, Owner 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.



### 1.12 BID RESULTS

After the bid opening, Bidders may obtain bid results from the Owner.

### 1.13 RESPONSIBLE BIDDER

A. To be considered a “Responsible Bidder”, at the time of Bid submittal, Bidders must meet all requirements specified in Section 004512 *Bidder Responsibility Criteria*.

B. Supplemental Responsibility Criteria: In addition to the mandatory Bidder responsibility criteria, the Owner may adopt relevant supplemental criteria for determining Bidder responsibility applicable to a project which the Bidder must meet. Where applicable, such supplemental criteria shall be attached to this solicitation.

1. At least seven (7) days prior to the bid submittal deadline, a potential Bidder may request the Owner modify the supplemental responsibility criteria. The Owner will evaluate the information submitted by the potential Bidder and respond before the Bid submittal deadline. If the evaluation results in a change of the supplemental responsibility criteria, the Owner will issue an addendum to this solicitation identifying the new and/or modified criteria.

2. Upon Owner’s request, the apparent low Bidder 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.

3. Upon request of the Owner, a Bidder whose Bid 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.

C. Not-responsible Bidder Notification.

1. If the Owner determines that the apparent low Bidder is not responsible, the Owner will notify the Bidder of its preliminary determination in writing.

2. Within three (3) days after receipt of the preliminary determination, the Bidder may withdraw its Bid or request a hearing where the Bidder may appeal the preliminary determination and present additional information to the Owner.

3. The Owner will schedule a hearing within three (3) working days of receipt of the Bidder’s request. The hearing members will include a STA Executive or their designee, and Project Manager.

4. The Owner will issue a final determination after reviewing information presented at the hearing.

5. If the Owner determines a Bidder to be not responsible, the Owner will provide, in writing, the reasons for the determination. If the final determination affirms that the Bidder is not responsible, the Owner will not execute a Contract with any other responsible Bidder until two (2) business days following submittal of the final determination to the not responsible Bidder.

6. The Owner’s final determination is specific to this project and will have no effect on other or future projects.

### 1.14 CONTRACT AWARD

A. The Owner will evaluate Bid 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 this solicitation.
  - c. It is accompanied by a bid guarantee, when 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 bidding on Public Works projects as determined by the Department of Labor and Industries; and
  - b. It meets the mandatory responsibility criteria established in RCW 39.04.350 for prime contractors and subcontractors 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 Bids and to waive informalities.
- C. The Owner may negotiate Bid price adjustments with the low responsive Bidder, including changes in the Contract Documents, to bring the Bid within the available funding per RCW 39.04.015.
- D. The apparent low Bidder, for purpose of award, shall be the responsive and responsible Bidder offering the low aggregate amount for the Base Bid plus selected 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 Bidder.
- F. The Contractor must purchase and maintain insurance coverages as stated in Section 007200.1 *General Conditions*.
- G. Note: AIA Payment Bond and Performance Bond forms (A312) are required. These forms will not be provided by the Owner.

#### 1.15 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. The Contract Documents are intended to be mutually cooperative and to provide all details reasonably required for the execution of the Work. Any person contemplating the submission of a Bid shall have thoroughly examined all of the various parts of the Contract Documents, and should there be any doubt as to the meaning or intent of the Contract Documents, the Bidder should request in writing to the A/E at least seven (7) working days prior to bid opening, an interpretation thereof. Any interpretation or change in the Contract Documents will be made only in writing, in the form of an addendum to the Contract Documents and will be furnished to all prospective Bidders receiving a set of documents, who shall indicate receipt of same in the space provided on the Bid Proposal Form. The Owner will not be responsible for any other explanation or interpretation of said documents.

#### 1.16 DISCREPANCIES & CONTRACT DOCUMENT REVIEW

- A. The intent of the 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 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 Owner representative as soon as they are discovered.

1.17 PROTEST PROCEDURES

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

PART 2 - PRODUCTS (Not used)

PART 3 - EXECUTION (Not used)

END OF SECTION 002100

## SECTION 003100 – STA PROJECT DESCRIPTION AND SCOPE OF WORK

### PROJECT DESCRIPTION

This locally funded public works project consists of select demolition to remove corroded steel framing at three lighted maintenance pits, installation of new framing, new fall protection, cleaning and application of new protective coatings, as well as the repair or addition of structural support in select areas.

Project Location: 1229 W. Boone Avenue in Spokane, WA.

Schedule: Work may begin when the Contractor receives a formal “Notice to Proceed.” Contractor must start and finish one pit at a time in order to allow for STA’s work to continue in the other two pits. Contractor shall proceed with promptness and dispatch and shall complete the work within 45 calendar days beginning on the day of commencement as stated in the Notice to Proceed.

Exclusions: N/A

### PROJECT GENERAL SCOPE OF WORK

The work shall generally consist of however is not limited to the following:

1. Obtain and pay for all required fees and permitting from the City of Spokane if necessary, for successful completion of the work.
2. Establish and maintain jobsite safety measures
3. Protect existing utilities (i.e. power, air, grease, ect.) located within the vicinity of the work
4. Replace the existing steel the frames the interior opening of the pit as per plan and spec
5. Repair/enhance structural supports where dictated per plan and spec
6. Clean and re-coat bottom of each pit
7. Clean and repaint steel framing
8. Replace the fall protection as per plan and spec
9. Record all “as-built” information for delivery to Agency as required for final closeout
10. All work to be completed as shown and specified on the associated plan and specifications for the project.

All work shall meet/exceed all codes, utility locating, rules and regulations, as set forth by the City, County and State of Washington. Contractor shall perform work in accordance with the Washington State Department of Labor and Industries Safety Standards.

Contractor is responsible for the supply of all equipment, materials, and labor necessary to complete the project. Contractor shall be responsible for the removal of all trash and waste materials from this project. Damages resulting from Contractor negligence shall be repaired immediately at no cost to STA. The Contractor shall take all precautions necessary to protect private property and the public during the construction period.

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

END OF SECTION 003100

SECTION 004200 STA BID SUBMITTAL CHECKLIST

**BID CHECKLIST- 2020-10472 Lighted Pit Repair**

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:**

- Section 004200 – STA Bid Submittal Checklist - Statement of Compliance, signed and dated below.
- Section 004213 – Bid Proposal Form: Submitted on appropriate form, filled out legibly and completely.
- Section 004215 – Bid Response: Submitted on appropriate form, filled out legibly and completely.
- Section 004512 – STA Responsibility Criteria: Submit filled out legibly and completely.
- Section 004546.E – Certificate of Wage Compliance: Submitted 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. Project coordination meetings
- d. Final cleanup and closeout

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

Project Name: Lighted Pit Repair

Project Number: 2020-10472

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: \_\_\_\_\_

**END OF SECTION 004200**

**SPOKANE TRANSIT AUTHORITY  
1230 W. BOONE AVE  
SPOKANE, WASHINGTON 99201**

**BID PROPOSAL – LIGHTED PIT REPAIR**

Name of Firm (Contractor submitting bid): \_\_\_\_\_

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

In compliance with the contract documents, the following bid proposal is submitted:

<b>Base Bid:</b>		
		\$
(Please print dollar amount in space above)		Total, <u>excluding</u> Washington State Sales Tax
<b>Bid Option(s):</b>		
Handrail Repainting: prep existing surfaces and repaint each hand rail, at each pit access, safety yellow		\$
(Description)	(Please print dollar amount in space above)	(Total, <u>excluding</u> Washington State Sales Tax)
<b>Unit Price(s):</b>		
{There are no unit prices on this project}	{There are no unit prices on this project}	\$ N/A
(Description)	(Please print dollar amount in space above)	(Total, <u>excluding</u> Washington State Sales Tax)

**Basis of Award:** The lowest bid shall be the lowest Base Bid price plus any bid options selected by the Owner and within funds available for the project. If the Agency awards a contract it will go to the responsive and responsible bidder who submitted the lowest bid as determined by this basis of award.

**Bid Options and Unit Prices:** prices shall include full compensation for the cost of labor, materials, equipment, applicable sales tax, overhead, profit, and any additional cost associated.

The Owner reserves the right to accept or reject any or all bid prices within ninety (90) days of the bid date. Bidder agrees and understands that any additional taxes, permits, bonds, prevailing wage certifications, etc. Applicable to this project, have been included in the above Bid Amounts.

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

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

**END OF SECTION 004213**

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

**RE: Project Number: 2020-10472**

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 Bidders Section.

EXAMINATION OF DOCUMENTS:

- A. Having carefully examined all Bidding Documents entitled “**Lighted Pit Repair**” 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: Work may begin when the Contractor receives a formal “Notice to Proceed.” Contractor must start and finish one pit at a time in order to allow STA’s work to continue in the other two pits. Contractor shall proceed with promptness and dispatch and shall complete the work within 45 calendar days beginning on the day of commencement as stated in the 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: \_\_\_\_\_

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 walk-through, 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: \_\_\_\_\_ Date: \_\_\_\_\_



I CERTIFY that no final determination of violation of RCW 50.12.070(1)(b), or 82.32.070(1)(b) has been made by the Washington State Departments of Employment Security, Labor and Industries or Revenue respectively dated within two (2) years of the date of the opening of this bid. I understand further that no bid may be submitted, considered or contract awarded for a public work to any person or entity that has a determination of violation of the above reference statutes within two (2) years from the date that a violation is finally determined and the date of this bid opening.

ANTI-KICKBACK: No officer or employee of STA, having the power or duty to perform an official act or action related to this submittal, shall have or acquire any interest in this submittal, or have solicited, accepted or granted a present or future gift, favor, service, or other thing of value from or to any person involved in this submittal.

DEBARRED BIDDERS: The undersigned represents that the Bidder and all officers with a controlling interest herein are not currently and have not previously been on any debarred bidders list maintained by the United States Government.

I CERTIFY that to the best of my knowledge, the information contained in this proposal is accurate and complete and that I have the legal authority to commit this Firm to a contractual agreement. I realize the final funding for any service is based upon budget levels and the approval of the Spokane Transit Authority's Board of Directors.

SUBMITTED BY:

BIDDER NAME \_\_\_\_\_

(As registered with the State of Washington)

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

PRINTED NAME & TITLE \_\_\_\_\_

DATE: \_\_\_\_\_

**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: \_\_\_\_\_

### 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: \_\_\_\_\_

**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 \_\_\_\_\_

**SUBCONTRACTOR LIST**

Project Number: 2020-10472

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 \_\_\_\_\_



SECTION 004512 – BIDDER RESPONSIBILITY CRITERIA

In accordance with RCW 39.04.350, 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 at the time of bid submittal:

1. 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; 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. Have received training on the requirements related to public works and prevailing wage under this chapter and chapter [39.12](#) RCW. The training must be provided by the Department of Labor and Industries or by a training provider whose curriculum is approved by the Department. Bidders that have completed three (3) or more public works projects, have had a valid business license in Washington for three (3) or more years, and are listed on the Department of Labor and Industries exemption list are exempt from this training requirement;
5. Within the three (3) year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries, or through a civil judgment entered by a court of limited or general jurisdiction, to have willfully violated, as defined in RCW [49.48.082](#), any provision of chapter [49.46](#), 49.48, or [49.52](#) 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

END OF SECTION 004512

SECTION 004546.E – CERTIFICATION OF COMPLIANCE WITH WAGE PAYMENT STATUTES

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date (April 15, 2020), the bidder is not a “willful” violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

\_\_\_\_\_  
Bidder’s Business Name

\_\_\_\_\_  
Signature of Authorized Official\*

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
City

\_\_\_\_\_  
State

*Check One:*

Sole Proprietorship  Partnership  Joint Venture  Corporation

State of Incorporation, or if not a corporation, State where business entity was formed:

\_\_\_\_\_

If a co-partnership, give firm name under which business is transacted:

\_\_\_\_\_

*\* If a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign). If a co-partnership, proposal must be executed by a partner.*

END OF SECTION 004546.E



**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 2020.

**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:** (project name, location, and description)

**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)  

<u>Number</u>	<u>Date</u>	<u>Quantity of pages</u>
---------------	-------------	--------------------------

**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)

<u>Item(s)</u>	<u>Units/limits</u>	<u>Price per unit</u>
----------------	---------------------	-----------------------

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

<u>Item</u>	<u>Price</u>
-------------	--------------

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  
Capital Projects 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 and title of authorized agent)

\_\_\_\_\_  
(signature and title of authorized agent)

**E. Susan Meyer**

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(printed name)

**Chief Executive Officer**

\_\_\_\_\_  
(title)

\_\_\_\_\_  
(title)

SAMPLE

The following Public Works General Conditions (“GC”) are incorporated into the contract to which they are attached. Although these GC are organized consistent with the General Conditions for Washington State Facility Construction, the provisions herein are not identical. Please review these GC carefully.

TABLE OF CONTENTS		Page
PART 1:	GENERAL PROVISIONS .....	3
1.01	DEFINITIONS.....	3
1.02	ORDER OF PRECEDENCE .....	4
1.03	EXECUTION AND INTENT.....	4
PART 2:	INSURANCE AND BONDS .....	5
2.01	GENERAL INSURANCE REQUIREMENTS.....	5
2.02	MINIMUM INSURANCE COVERAGES .....	6
2.03	PAYMENT AND PERFORMANCE BONDS .....	7
PART 3:	TIME AND SCHEDULE .....	7
3.01	PROGRESS AND COMPLETION .....	7
3.02	CONSTRUCTION SCHEDULE.....	7
3.03	OWNER’S RIGHT TO SUSPEND THE WORK FOR CONVENIENCE.....	8
3.04	OWNER’S RIGHT TO STOP THE WORK FOR CAUSE.....	8
3.05	DELAY.....	9
3.06	NOTICE TO OWNER OF LABOR DISPUTES .....	10
3.07	DAMAGES FOR FAILURE TO ACHIEVE TIMELY COMPLETION.....	10
PART 4:	SPECIFICATIONS, DRAWINGS, AND OTHER DOCUMENTS.....	10
4.01	DISCREPANCIES AND CONTRACT DOCUMENT REVIEW .....	10
4.02	PROJECT RECORD.....	11
4.03	SHOP DRAWINGS.....	11
4.04	ORGANIZATION OF SPECIFICATIONS.....	12
4.05	OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS, AND OTHER DOCUMENTS .....	12
PART 5:	PERFORMANCE.....	13
5.01	CONTRACTOR CONTROL AND SUPERVISION.....	13
5.02	PERMITS, FEES, AND NOTICES .....	13
5.03	PATENTS AND ROYALTIES .....	14
5.04	PREVAILING WAGES.....	14
5.05	HOURS OF LABOR .....	15
5.06	NONDISCRIMINATION.....	15
5.07	SAFETY PRECAUTIONS .....	16
5.08	OPERATIONS, MATERIAL HANDLING, AND STORAGE AREAS.....	17
5.09	PRIOR NOTICE OF EXCAVATION .....	18
5.10	UNFORESEEN PHYSICAL CONDITIONS .....	18
5.11	PROTECTION OF EXISTING STRUCTURES, EQUIPMENT, VEGETATION, UTILITIES, AND IMPROVEMENTS .....	18
5.12	LAYOUT OF WORK.....	18
5.13	MATERIAL AND EQUIPMENT .....	18
5.14	AVAILABILITY AND USE OF PREMISES AND UTILITY SERVICES.....	19
5.15	TESTS AND INSPECTION .....	19
5.16	CORRECTION OF NONCONFORMING WORK.....	20
5.17	CLEAN UP.....	21

5.18	ACCESS TO WORK AND COMMUNICATIONS REGARDING PROJECT STATUS .....	21
5.19	OTHER CONTRACTS.....	21
5.20	SUBCONTRACTORS AND SUPPLIERS.....	22
5.21	WARRANTY OF CONSTRUCTION.....	23
5.22	INDEMNIFICATION.....	23
PART 6:	PAYMENTS AND COMPLETION.....	24
6.01	CONTRACT SUM .....	24
6.02	SCHEDULE OF VALUES .....	24
6.03	APPLICATION FOR PAYMENT.....	24
6.04	PROGRESS PAYMENTS.....	25
6.05	PAYMENTS WITHHELD .....	26
6.06	RETAINAGE AND BOND CLAIM RIGHTS .....	26
6.07	SUBSTANTIAL COMPLETION.....	26
6.08	PRIOR OCCUPANCY .....	26
6.09	FINAL INSPECTION, FINAL COMPLETION, ACCEPTANCE, AND PAYMENT (PROJECT CLOSE-OUT)...	27
PART 7:	CHANGES .....	28
7.01	CHANGE IN THE WORK.....	28
7.02	CHANGE IN THE CONTRACT SUM .....	29
7.03	CHANGE IN THE CONTRACT TIME.....	35
PART 8:	CLAIMS AND DISPUTE RESOLUTION .....	36
8.01	CLAIMS .....	36
8.02	ARBITRATION .....	37
8.03	CLAIMS AUDITS.....	38
PART 9:	TERMINATION OF THE WORK.....	39
9.01	TERMINATION BY OWNER FOR CAUSE .....	39
9.02	TERMINATION BY OWNER FOR CONVENIENCE .....	40
PART 10:	MISCELLANEOUS PROVISIONS.....	40
10.01	GOVERNING LAW .....	40
10.02	SUCCESSORS AND ASSIGNS .....	40
10.03	MEANING OF WORDS .....	41
10.04	RIGHTS AND REMEDIES.....	41
10.05	CONTRACTOR REGISTRATION.....	41
10.06	TIME COMPUTATIONS.....	41
10.07	RECORDS RETENTION.....	41
10.08	THIRD-PARTY AGREEMENTS .....	41
10.09	ANTITRUST ASSIGNMENT.....	41
10.10	HEADINGS AND CAPTIONS .....	41
10.11	ELECTRONIC SIGNATURES .....	42

PART 1: GENERAL PROVISIONS

1.01 DEFINITIONS

Capitalized terms included in these GC which are not defined herein shall have the same meaning as defined in the document(s) to which these GC are attached.

- 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. **Bidder** means an individual, partnership, firm, corporation or joint venture submitting a bid with the intent to enter into a contract with Owner for the completion of the Work.
- E. **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.
- F. **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.
- G. **Contract Award Amount** is the sum of the Base Bid and any accepted Alternates.
- H. **Contract Documents** means the Advertisement for Bids, Instructions for Bidders, executed Bid Proposal Form and Bidder certifications, Contract, General Conditions, Modifications to the General Conditions, Federal Terms & Conditions, Drawings, Specifications, all addenda and modifications thereof, all supporting documentation required by any of the above, or as requested by the Owner.

- I. **Contract Sum** is the total amount payable by Owner to Contractor for performance of the Work in accordance with the Contract Documents. 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.
- J. **Contract Time** is the number of calendar days allotted in the Contract Documents for achieving Substantial Completion of the Work.
- K. **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.
- L. **Day(s)**. Unless otherwise specified, day(s) shall mean calendar day(s).
- M. **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.
- N. **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 6.09.E.
- O. **Final Completion** means that the Work is fully and finally complete in accordance with the Contract Documents, as more fully set forth in Section 6.09.D.
- P. **Force Majeure** means those acts entitling Contractor to request an equitable adjustment in the Contract Time, as more fully set forth in Section 3.05.A.
- Q. **L&I** means the State of Washington Department of Labor and Industries.
- R. **Notice** means a written notice which has been delivered 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.
- S. **Notice to Proceed** means a written notice from Owner to Contractor that defines the date on which the Contract Time begins to run.

- T. **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.
- U. **Person** means a corporation, partnership, business association of any kind, trust, company or individual.
- V. **Prior Occupancy** means Owner's use of all or parts of the Project before Substantial Completion, as more fully set forth in Section 6.08.A.
- W. **Progress Schedule** means a schedule of the Work, in a form satisfactory to Owner, as further set forth in Section 3.02.B.
- X. **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.
- Y. **Project Manual** means the volume usually assembled for the Work which may include the bidding requirements, sample forms, and other Contract Documents.
- Z. **Project Record** means the separate set of Drawings and Specifications as further set forth in Section 4.02.A.
- AA. **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.
- BB. **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.
- CC. **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.
- DD. **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.
- EE. **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.
- FF. **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
- A. Any conflict or consistency in the Contract Documents shall be resolved by giving the documents precedence in the following order:
1. Federal Terms & Conditions, if applicable.
  2. Executed Change Order(s), in descending order.
  3. Executed Form of Contract.
  4. Supplemental Conditions, if applicable.
  5. Modifications to the General Conditions, if applicable.
  6. General Conditions.
  7. Specifications. Provisions in Division 1 shall take precedence over provisions of any other Division.
  8. Drawings. In case of conflict within the Drawings, large scale drawings shall take precedence over small scale drawings.
  9. Signed and Completed Bid Form.
  10. Instructions to Bidders.
  11. Advertisement for Bids.
- 1.03 EXECUTION AND INTENT
- Contractor makes the following representations to Owner:
- A. **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;
- B. **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;

- C. **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
- D. **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 GENERAL INSURANCE REQUIREMENTS

At the Contractor's own expense, the Contractor shall procure and maintain for the duration of the Contract commercial insurance against claims for injuries to persons or damages to property that may arise from or in connection with the Contractor's own work, including the work of the Contractor's agents, representatives, employees, and Subcontractors of any tier. Contractor shall include in its bid the cost of all insurance and bond costs required to complete the base bid work and accepted alternates.

- A. **Evidence of Insurance.** Within ten (10) days of execution of a contract or prior to commencement of the Work, whichever occurs earlier, Contractor shall obtain, and provide evidence to Owner, the minimum insurance coverages and limits specified hereunder. If the Contractor maintains higher limits than those specified herein, the Owner shall be entitled to the higher limits maintained by the Contractor. Owner reserves the right to receive a certified and complete copy of all of the Contractor's insurance policies and the Contractor shall furnish such copies within ten (10) days of request by Owner. All insurance certificates shall name Owner's Contract number, Project number and Project title.
- B. **Insurer Minimum Requirements.** All insurance policies shall be written with insurance companies licensed to do business in the State of Washington and shall have a rating of not less than A:VII according to the A.M. Best Company.

- C. **Deductible.** The Contractor is responsible for declaring to the Owner and paying any deductible or self-insured retention that is required by any of the Contractor's insurance. If the Owner is required to contribute to the deductible or self-insured retention under any of the Contractor's insurance policies, the Contractor shall reimburse the Owner the full amount of the deductible or self-insured retention.
- D. **Self-insured Retention.** Any Contractor self-insured retentions must be declared to and approved in writing by Owner prior to execution of a Contract. Owner reserves the right to require that self-insured retentions be eliminated, lowered or replaced by a deductible. Self-insurance or self-insured retentions will not be considered to comply with these insurance requirements unless specifically approved in writing by Owner.
- E. **Owner as Additional Insured.** Owner shall be named as an additional insured on the Contractor's commercial general liability, umbrella liability and business auto liability policies and shall contain, or be endorsed to contain, that the Owner, its officers, officials, employees and volunteers, are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor, and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including material, parts or equipment furnished in connection with such work or operations. The Owner shall be endorsed as a loss payee on the Contractor's builders' risk and boiler and machinery policies.
- F. **Primary and Non-contributory.** It is the intent of the Contract for the Contractor's insurance to be considered primary in the event of a loss, damage or suit. The Owner's own comprehensive general liability policy will be considered excess coverage in respect to the Owner, its officers, officials, employees, and volunteers, and shall not contribute to the Contractor. Additionally, the Contractor's commercial general liability policy must provide cross-liability coverage as would be achieved under a standard ISO separation of insureds clause.
- G. **Notification.** The Contractor shall request from its insurer modification of the ACORD certificates to include language that written notification will be given to the Owner for any cancellation, suspension or material change in the Contractor's coverages at least thirty (30) days in advance of such cancellation, suspension or material change.

- H. **Term of Insurance Coverage.** Contractor shall maintain insurance coverages herein during the Work and for two (2) years after Final Acceptance. Contractor shall also maintain such insurance coverage during the performance of any corrective Work required by Section 5.16.
- I. **Subcontractor Coverage.** Contractor shall require and verify all Subcontractors maintain insurance meeting all of the requirements stated herein.
- J. **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.
- C. **Industrial Insurance.** 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.
- D. **Employer's Liability Insurance.** Employer's liability or "stop gap" coverage with minimum limits of \$1,000,000 each accident, \$1,000,000 each employee bodily injury by disease, and \$1,000,000 policy limit injury by disease.
- E. **Builder's Risk.** Builder's Risk coverage on a replacement-cost basis, at an amount equal to the initial Contract Sum and any subsequent Change Orders, plus twenty-five percent (25%) for additional architectural and engineering services. This property insurance shall cover, at a minimum, malicious mischief, false work, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, reasonable compensation for Owner's and, if applicable, A/E's services and expenses required as a result of an insured loss, perils insured under the ISO special cause of loss form CP 10 30 and shall be endorsed to provide full coverage for loss or damage from collapse, including collapse resulting from design error. The policy shall cover reasonable compensation for architects' and/or engineers' services and expenses made necessary by an insured loss. Insured property shall include portions of the Work located away from the work site, but intended for use at the work site, and shall cover portions of the Work in transit. The policy shall cover the cost of removing debris, including demolition as may be legally necessary by any law, ordinance or regulation.

## 2.02 MINIMUM INSURANCE COVERAGES

- A. **General Liability Insurance.** Commercial General Liability (CGL) insurance on a project-occurrence basis, with coverage at least as broad as ISO form CG 00 01 with minimum limits of \$2,000,000 per occurrence and \$4,000,000 in the aggregate. Coverage shall include, but not be limited to:
1. Premise/operations;
  2. Contractual liability;
  3. Products & completed operations;
  4. Independent contractors
  5. Property damage; and
  6. Personal injury/advertising injury
- B. **Automobile Liability Insurance.** Commercial automobile liability insurance on a Combined Single Limit basis at least as broad as ISO form CA 00 01 with minimum limits of \$2,000,000 per occurrence.

The builders risk policy shall be maintained in effect, unless otherwise provided for in the Contract Documents, until the earliest of the following dates: (a) the date on which all persons and organizations who are insureds on the policy agree it shall be terminated; (b) the date on which final payment has been made; (c) the date on which the insurable interests in the property of all insureds other than the Owner have ceased.

For projects not involving New Building Construction, an "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.

- F. **Boiler & Machinery.** When applicable, Contractor shall purchase and maintain boiler and machinery coverage covering insured objects during installation and until final acceptance by Owner. This insurance shall name as insureds the Owner, Contractor, and all Subcontractors of any tier.

## 2.03 PAYMENT AND PERFORMANCE BONDS

- A. Payment and performance bonds for one hundred percent (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 fifteen percent (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 fifteen percent (15%) or more.
- B. No payment or performance bond is required if the Contract Sum is \$150,000 (one-hundred fifty thousand dollars) or less and Contractor agrees in writing that Owner may, in lieu of the bond, retain ten percent (10%) of the Contract Sum for the period allowed by RCW 39.08.010.
- C. **Alternative Surety.** 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:
1. Owner has a reasonable objection to the surety; or
  2. Any surety fails to furnish reports on its financial condition if requested by Owner.

## PART 3: TIME AND SCHEDULE

### 3.01 PROGRESS AND COMPLETION

Contractor shall diligently execute 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 GC, Contractor shall, within fourteen (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. At 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 Project 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 fourteen (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 ninety (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 ninety (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.** Owner, 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 Owner, 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 Owner's satisfaction the breach or default of any of the terms, covenants or conditions of the Contract Documents within the stated period of time for remedy, Owner 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 Owner 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 Owner elects to waive its remedies for any breach by the Contractor of any covenant, term or condition of this Contract, such waiver by Owner shall not limit Owner'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 (10) 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.** Contractor shall be entitled to an equitable adjustment in Contract Time, and may be entitled to an equitable adjustment in Contract Sum, if the cost or time of Contractor's performance is changed due to the fault or negligence of Owner, provided the Contractor makes a request according to Sections 7.02 and 7.03.
- 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**

1. **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 which differ from the project Drawings and Specifications, including, but not limited to, depths of foundations, horizontal and vertical locations of internal and underground utilities and appurtenances referenced to permanent visible and accessible surface improvements, field changes with 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 Shop Drawings.** Unless otherwise provided in Division 1, Contractor shall submit to Owner and, if applicable, A/E, for approval three (3) original paper copies and an electronic copy in PDF format of all Shop Drawings. Unless otherwise indicated, one (1) original copy of all Shop Drawings shall be retained by Owner; one (1) original copy shall be

retained by A/E; and one (1) original copy shall be returned to Contractor.

#### 4.04 ORGANIZATION OF SPECIFICATIONS

- A. **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, permit drawings and life safety plans as may be required by federal, state and local agencies.
- 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.

Upon issuance of a permit or license, a copy shall be provided to the Owner. Prior to Final Acceptance, the original approved and 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

- A. **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 and/or its Subcontractors, of any tier, 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 in writing.

#### 5.04 PREVAILING WAGES

- A. **Contractor to Pay Prevailing Wages.** Contractor and Subcontractors of any tier 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 RCW 39.12 *Prevailing Wages on Public Works*, the rules and regulations of L&I, and where applicable, the Davis-Bacon and Related Acts. The schedule of prevailing wage rates for the locality or localities of the Work is determined by the Industrial Statistician of L&I. Such schedule is located at:  
<https://fortress.wa.gov/lni/wagelookup/prvwagelookup.aspx>

Contractor shall use the Bid proposal due date as the effective date and Spokane County as the locality of work when determining applicable prevailing wage rates. A copy of applicable prevailing wage rates is available for viewing upon request at Spokane Transit Authority, 1230 W. Boone Ave., Spokane, WA 99201. It is the Contractor's responsibility to verify the applicable state and federal prevailing wage rates for all job classifications.

- 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 ("Intent"), approved by L&I, certifying the rate of hourly wage to be paid to each classification of laborers, workers or mechanics employed upon the Work by Contractor and Subcontractors of any tier. 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 ("Affidavit"), approved by L&I, for the Contractor and every subcontractor, of any tier, that performed work on the Project.
- D. **Statement with Pay Application.** Each Application for Payment submitted by Contractor shall state that prevailing wages have been paid in accordance with the pre-filed and approved Intent.
- E. **Post Statements of Intent at Job Site.** Copies of the approved Intent(s) shall be posted on the job site with the address and telephone number of the Industrial Statistician of L&I where a complaint or inquiry concerning prevailing wages may be made.
- F. **Contractor to Pay for Statements of Intent and Affidavits.** In compliance with chapter 296-127 WAC, Contractor shall pay to L&I the currently established fee(s) for each Intent and/or Affidavit submitted to L&I for certification.
- G. **Certified Payrolls.** Consistent with RCW 39.12.120(2) and WAC 296-127-320, the Contractor and Subcontractors of any tier shall submit certified payroll records as required.

H. **Dispute Resolution.** Any dispute regarding prevailing wage rates that cannot be resolved between the parties shall be referred to the Director of L&I and such decision of the Director of L&I shall be final and conclusive and binding on the parties.

#### 5.05 HOURS OF LABOR

A. **Overtime.** Contractor shall comply with all applicable provisions of RCW 49.28, which 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 (8) hours in any one (1) 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 (8) hours of each calendar day shall be not less than one and one-half (1-1/2) times the rate allowed for this same amount of time during eight (8) hours of service.

B. **4-10 Agreements.** Notwithstanding the preceding Section, 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 (10) hours in a calendar day. No such agreement may provide that the employees work ten-hour days for more than four (4) 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 (40) 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 VI of the Civil Rights Act, 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 1975, Section 202 of the Americans with Disabilities Act of 1990, the Civil Rights Act of 1991, Presidential Executive Order 11246, Executive Order 11375, Executive Order 13672, Federal Transit law at 49 U.S.C. § 5332, 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, religion, color, national origin, sex, age, marital status, sexual orientation, gender identity, 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 and prohibited under state and federal law.

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, religion, color, national origin, sex, age, marital status, sexual orientation, gender identity, 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, RCW 49.60, and state and federal prohibitions against discrimination.

4. **Owner and Government Access to Contractor Records.** Contractor shall permit access to its books, records and accounts, and to its premises by Owner, the Equal Employment Opportunity Commission, and 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

- data sheets required by chapter 296-62 WAC.
- 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
- 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,
2. **Training.** At a minimum, Contractor shall provide training for persons working on the Project site which includes, but is not limited to:
    - 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, 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.

regulation, statute or ordinance, but in no case shall any such hazardous substance be stored more than ninety (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 responsibility. 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.** "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 twelve (12) inches in depth for agricultural purposes, or road ditch maintenance that does not change the original road grade or ditch flow line.
- B. **Use of Locator Services.** 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 seven (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 benchmarks 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, the 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 (1) year after the date

of Substantial Completion of the Work or designated portion thereof, or within one (1) year after the date for commencement of any system warranties established under Section 5.16.D, 5.21, 6.08.B, 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 (1) 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 (1) year from the date of repair or replacement. Obligations under this Section 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 (1) year as described in Section 5.16.D 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

- A. **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:

1. To comply with regulations of authorities having jurisdiction and safety standards for cleaning;
2. To not burn waste materials;
3. To not bury debris or excess materials on the Owner's property;
4. To not discharge volatile, harmful or dangerous materials into drainage systems; and
5. To remove waste materials from the site and dispose of in a lawful manner.
6. 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 Contract and prior to commencement of Contractor's performance. The parties to the

Agreement shall review their respective responsibilities and personnel assignments.

1. **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.
2. **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.
3. Minutes of the meeting shall be taken by the Owner. The Owner shall promptly distribute the meeting minutes to everyone concerned. Contractor is required to distribute the meeting minutes to affected subcontractors and prime suppliers.

- C. **Progress Meetings at Regular Intervals.** Contractor should attempt to coordinate meeting dates with preparation of payment requests.

1. **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.
2. **Review Project Progress Schedule Since the Last Meeting.** Determine where each activity is in relation to the schedule, and whether on time, 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.

- D. **Reporting.** No later than three (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 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 Section in each of its first-tier Subcontracts and shall require each of its Subcontractors 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 Section apply to all subcontractors regardless of tier. At the time of subcontract execution, the Contractor shall verify that each of its first-tier subcontracts meet 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. Have a Washington Employment Security Department number, as required in Title 50 RCW;
4. Have a Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
5. Maintain Industrial Insurance (workers' compensation coverage) for the subcontractor's employees working in Washington, as required in Title 51 RCW;
6. Have received training on the requirements related to public works and prevailing wage under this chapter and chapter 39.12 RCW. The training must be provided by L&I or by a training provider whose curriculum is approved by L&I. Contractors that have completed three (3) or more public works projects, have had a valid business license in Washington for three (3) or more years, and are listed on the L&I exemption list are exempt from this training requirement;
7. Within the three (3) year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by L&I, or through a civil judgment entered by a court of limited or general jurisdiction, to have willfully violated, as defined in

RCW [49.48.082](#), any provision of chapter [49.46](#), 49.48, or [49.52](#) RCW;

8. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3); and
9. If applicable, have:
  - a. An electrical contractor license, if required by Chapter 19.28 RCW; and/or
  - b. An elevator contractor license, if required by Chapter 19.28, RCW.

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 (two thousand five-hundred dollars). 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 Section 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

- A. **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

- A. **Contractor to Submit Schedule of Values.** Before submitting its first Application for Payment, Contractor shall submit to Owner for approval a Schedule of Values. The Schedule of Values shall include appropriate amounts for mobilization and demobilization, record drawings, Operations & Maintenance manuals, and any other requirements for Project closeout, and shall be approved and 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.

1. 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.
  2. If federally funded, certified weekly payrolls must be submitted with Application for Payment.
  3. Each Application for Payment shall be consistent with previous applications and payments as certified and paid for by the Owner.
  4. **Payment Application Times.** Progress payments will be made only for actual work performed or materials delivered.
  5. **Payment Application Forms.** Use the Form for Applications for Payment included in the addenda or preapproved format.
  6. Include amounts of Change Orders and Construction Change Directives issued prior to the last day of the construction period covered by the application.
  7. **Transmittal.** Submit one (1) executed copy 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.
  8. Transmit each copy with a transmittal form listing attachment(s), and recording appropriate information related to the application in a manner acceptable to the Owner.
  9. **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.
  10. 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 ten (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 Thirty (30) Days.** Owner shall make progress payments, in such amounts as Owner determines are properly due, within thirty (30) Days after receipt of a properly executed and complete 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 five percent (5%) of the amount of each progress payment until forty-five (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

A. **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

A. **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 Section, Owner shall be responsible for loss of or damage to the Work resulting from Prior Occupancy. Contractor's one (1) 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 L&I, 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.

**G. 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; and
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 fourteen (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 thirty (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 change to the 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; and
5. The supporting cost data to be submitted in sufficient detail satisfactory to the Owner.

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 seven (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 seven (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 thirty (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 sub Section 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 7.03.C. 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 Section 7.02.B.
    - b. **Unit Prices.** By application of unit prices to the quantities of the items involved as determined in Section 7.02.C.
    - c. **Time and Materials.** On the basis of time and material as determined in Section 7.02.D.
    - d. **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 sub Section 3 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 the 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 over \$1,000 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 L&I approved Intent or Davis-Bacon prevailing wages, or a higher amount if approved by the Owner. Direct supervision shall be a reasonable percentage not to exceed fifteen percent (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 L&I.
    - (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 two percent (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.
- (5) 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, three percent (3%) of direct labor costs.
- (2) **5% For Subcontractors.** For Subcontractors, five percent (5%) of direct labor costs.

Expendables and consumable 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 7.03.D, 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 non-craft 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 sixteen percent (16%) of the first \$50,000 of the cost, and four percent (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 sixteen percent (16%) of the first \$50,000 of the cost, and four percent (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 six percent (6%) of the first \$50,000 of the amount due each Subcontractor, and four percent (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 four percent (4%) of the first \$50,000 of the amount due the sub-Subcontractor, and two percent (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 7.02.B 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 twelve percent (12%) of the first \$50,000 of the cost, and four percent (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 twelve percent (12%) of the first \$50,000 of the cost, and four percent (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 four percent (4%) of the first \$50,000 of the amount due each Subcontractor, and two percent (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 four percent (4%) of the first \$50,000 of the amount due the sub-Subcontractor, and two percent (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 7.02.B 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, six percent (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 four percent (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 sub Section f. and g. above.
- C. **Change Order Pricing -- Unit Prices**
1. **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.
  2. **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.
  3. **Cost Breakdown Consistent with Fixed Price Requirements.** Contractor shall submit costs in accordance with Section 7.02.B 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 approved by Owner.
- D. **Change Order Pricing -- Time-and-Material Prices**
1. **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.
  2. **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 two (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.
  3. **Cost Breakdown Consistent with Fixed Price Requirements.** Contractor shall submit costs in accordance with Section 7.02.B 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 seven (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 seven (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 thirty (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 Subsection 7.03.B.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 Section, 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 Section, 7.03.D, subject to the following conditions:

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 Section 7.03.B;
3. **Demonstrate Impact on Critical Path.** Contractor shall establish the extent of the change in Contract Time in accordance with Section 7.03.C; 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 7.02.B.7.f 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 not to exceed three percent (3%) of the Contract Award Amount divided by the originally specified Contract Time for each Day of the delay.

## 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 one-hundred-twenty (120) Days from Owner's final offer made in accordance with Section 7.01.E 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. **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 Contract Compliance Specialist ("CCS"), or their designee, 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 sixty (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 sixty (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. **Review of Claim and Finality of Decision.** To assist in the review of Contractor's Claim, Owner's CCS, or their designee, 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 CCS' 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 Decision.** The CCS' 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's 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 CEO's decision rendered in accordance with Section 8.01 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 thirty (30) Days after the date of the CEO's decision on such Claim. Failure to demand arbitration within said thirty (30) Day 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. **Seven (7) Day Notice to Terminate for Cause.** Owner may, upon seven (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 Section 9.02.B 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 Section 9.01.A 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 & 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

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

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 EMPLOYEE SOLICITATION

Contractor, without the written consent of Owner, shall not directly or indirectly solicit, influence, entice or hire or attempt to solicit, influence, entice or hire any employee of Owner to: (a) cease employment with Owner; or (b) do business related to a business connected with the Contractor'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 Owner, whichever is earlier. Owner's employees shall be deemed to be related to or connected with a Contractor if such Owner employee becomes (a) a partner in a general or limited partnership or employee of a partnership; or (b) a shareholder, officer, employee or director of a corporation, member, consultant or agent for the Contractor or any of Contractor's affiliates, subsidiaries or connected business. This Section shall survive the termination of the Contract. This Contract is not restricted to any geographical area.

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

### 10.05 RIGHTS AND REMEDIES

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.

### 10.06 CONTRACTOR REGISTRATION

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.

### 10.07 TIME COMPUTATIONS

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.

### 10.08 PUBLIC RECORDS ACT

Each Party to the Contract understands and acknowledges the Owner is a municipal corporation of the State of Washington subject to the Public Records Act, RCW 42.56 *et seq.*

### 10.09 RECORDS RETENTION

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 six (6) years after the date of Final Acceptance.

### 10.10 THIRD-PARTY AGREEMENTS

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.

### 10.11 HEADINGS AND CAPTIONS

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.

### 10.12 ANTITRUST ASSIGNMENT

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.

#### 10.13 CONFLICT OF INTEREST

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

- A. The employee, officer or agent;
  - B. any member of his or her 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 interest in the firm, Contractor or Subcontractors, of any tier, selected for Award.

#### 10.14 COUNTERPARTS

The Contract may be executed in one or more counterparts, each of which shall constitute an original Contract, but all of which together shall constitute one and the same instrument.

#### 10.15 ELECTRONIC SIGNATURES

A signed copy of this Agreement or any other ancillary agreement transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of any original executed copy of this Agreement or such other ancillary agreement for all purposes.

END OF SECTION 007200

Spokane Transit Authority Public Works Construction Project  
Special Conditions  
Public Works Contract # 2020-10472

1. 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.

2. 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.

3. “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.

END OF SECTION 007300



**Washington State Prevailing Wages  
For Spokane County, City of Spokane  
Construction Type: Building**

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 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: <https://secure.lni.wa.gov/wagelookup/>

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 ensure 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.**

END OF SECTION 007346.1