



2026-001
Property Management Services
Addendum 001 January 22, 2026

Attention Bidders: The following changes and additions are made to the bid documents.

This Addendum is issued solely to attach a Sample Agreement and WTA's General Terms and Conditions as an exhibit to the Sample Agreement. No other changes to the solicitation are made.

[SAMPLE]
AGREEMENT FOR PROPERTY MANAGEMENT SERVICES

This Agreement for Property Management Services ("Agreement") is made and entered into between WHATCOM TRANSPORTATION AUTHORITY (WTA), a Public Transportation Benefit Area operating under the authority of RCW Chapter 36.57A and located at 4011 Bakerview Spur Road in Bellingham, Washington, and _____, of _____, Washington ("Contractor"). Contractor agrees to provide WTA with property management services on that real property located at 1530 Cornwall in Bellingham, Washington ("Property") according to the terms and conditions set forth below.

WTA and Contractor agree as follows:

1. ORDER OF PRECEDENCE:

The documents comprising this Agreement, in order of precedence, are set out in the following documents, which if outside this document, are incorporated by reference:

- a. This Agreement;
- b. WTA's General Terms and Conditions which is attached hereto and incorporated by reference as Exhibit A ("General Terms");
- c. RFQ 2026-001, including all Addenda and Appendices; and
- d. Contractor Proposal submitted on _____.

Should there be any inconsistency between this Agreement and any of the other referenced and incorporated documents, then the terms of this Agreement shall apply.

2. RESPONSIBLE PERSONS

- a. WTA designates Devon deBoer, Construction Project Manager, as its Project Manager WTA's liaison officer to the Contractor.
- b. Contractor designates _____, its _____, as its Contractor Representative for all services provided by the Contractor, and liaison officer to WTA.
- c. Either party may substitute a new Project Manager or Contractor's Representative by notifying the other party in writing. The Project Manager or Contractor's Representative may delegate responsibility for managing particular work to other authorized employees.

3. SCOPE OF WORK:

Contractor agrees to perform property management services for the Property as outlined in this Agreement, including, but not limited to RFQ 2026-001.

4. TERM AND TERMINATION

- a. The term of this Agreement shall commence on _____ and shall be for an initial term of three (3) years ("Initial Term").
- b. WTA reserves the right in its discretion to renew the Agreement for up to a total of three (3) additional terms of one (1) year increments ("Extended Term") based on satisfactory performance. WTA shall provide Contractor with written notice of any such extension no later than thirty (30) days prior to the end of the Initial Term or any Extended Term. The terms and conditions for an Extended Term shall be those set out in this Agreement, subject to any mutually agreed upon modifications.
- c. WTA reserves the right to terminate this Agreement in accordance with the termination provisions set forth in the General Terms, including for convenience.

5. PAYMENT FOR SERVICES AND COST REIMBURSEMENTS

- a. Contractor shall be paid as follows for the services rendered under this Agreement: _____. Contractor shall provide an itemized monthly statement of services rendered to WTA ("Services Invoice").
- b. In addition, each month, Contractor shall provide WTA with an accounting of all costs, fees and

expenses that it has advanced on behalf of WTA as required under this Agreement, and provide all documents relating to the services, tax or product ("Cost Reimbursement Invoice").

- c. WTA shall pay Contractor in US funds, at Net 30 terms from the date of receipt of all Services Invoices and Cost Reimbursement Invoice.
- d. Services Invoices and Cost Reimbursement Invoices shall be sent to ap@ridewta.com or ATTN: Accounts Payable at the WTA address listed below.
- e. Contractor shall not incur or advance any single cost in relationship to the Agreement exceeding \$1,000.00, without prior written approval from WTA.

6. COST OF LIVING PRICE INCREASES

Beginning on the first anniversary of this Agreement, WTA may consider a rate adjustment if requested by the Contractor in writing if provided at least thirty (30) days prior to an annual Agreement anniversary. If accepted by WTA, any Agreement price decreases and increases will be based using the CPI-U with the following parameters to obtain the Series ID CUURS49DSAS:

- Not Seasonally Adjusted
- AREA: Seattle-Tacoma-Bellevue, WA
- BASE: Current
- ITEM: Services
- PERIODICITY: Monthly

Any increase allowed will be the difference between the current Agreement year and the previous year. Rates will not be adjusted more than 10% above or below the original Contracted amount.

WTA, in its sole discretion, will decide whether to approve or deny any adjustment request within thirty (30) days of receipt of request. If approved, a rate increase shall take effect thirty (30) days after approval.

7. MANAGEMENT AND HANDLING OF RECEIVED MONEY

- a. Contractor will collect deposits and rent owed by tenants of the Property, all of which shall be fully disbursed to WTA within fourteen (14) days of receipt, pursuant to the instructions and procedures provided by WTA.
- b. WTA will retain deposits from all tenants pursuant to the terms and conditions of the underlying lease. WTA will be responsible for reimbursing a tenant for any entitled to deposit upon vacation.
- c. Contractor shall not offset any collected rental income or other amounts based upon any claims that he/she/it may have against WTA for amounts due and owing.
- d. Contractor shall collect any dues, taxes, costs and expenses that a tenant may be obligated to reimburse under an applicable lease. Contractor shall be entitled to retain any such collected amounts to the extent that it advanced the original payment for any dues, taxes, costs and expenses. Otherwise, such collected amounts shall be disbursed to WTA.
- e. Contractor shall provide with its monthly invoice, an accounting of all amounts it has paid during the prior month in association with this Agreement and all amounts collected from any tenant, in a format and with the information requested by WTA.

8. MANAGEMENT OF ORDINARY MAINTENANCE

If the Property is leased to a single occupant, then WTA will seek to transfer responsibility for all maintenance to the tenant. However, if the Property is leased by multiple tenants or a single tenant cannot assume full responsibility for maintenance, then the following terms and conditions apply:

- a. At the commencement of the Term, Contractor shall: (1) determine all Ordinary Maintenance required for the Property and the building on the Property; (2) solicit proposals from third-parties to provide services for needed Ordinary Maintenance with any work to be bid at then Prevailing Wage rates; (3) provide a report to WTA outlining the recommended Ordinary Maintenance, summarizing secured proposals to provide Ordinary Maintenance services, and recommending

the proposal to accept.

- b. WTA will decide who should be awarded any contract for Ordinary Maintenance from the bids collected by Contractor, based on, *inter alia*, competitive bidding obligations. Alternatively, WTA may, in its discretion: (1) seek bids for any Ordinary Maintenance work needed for the Property, and thereafter award a contract pursuant to its selection process; or (2) assign performance of any Ordinary Maintenance to its own employees.
- c. After selection of any third-party service provider, WTA shall be responsible to prepare and enter a contract with the selected service provider.
- d. Contractor shall thereafter manage the contract with the third-party service provider, including, but not limited to, all scheduling, overseeing, supervising, monitoring and paying of all invoices submitted by the selected provider. Contractor shall report to WTA any breach by third-party Ordinary Maintenance service provider of any contract with WTA, and WTA shall have full discretion to determine how to respond to such breach, including, but not limited to, delegation of such to Contractor.
- e. Contractor shall include all advanced payments and costs for Ordinary Maintenance services on its monthly Cost Reimbursement Invoice.
- f. During the Term, Contractor shall monitor the Property and the building on the Property to determine if there is any new Ordinary Maintenance that should be taken, and follow the above procedures to secure services for the same.
- g. Under this Agreement, the term "Ordinary Maintenance" means routine repairs related to unit turnover work; grounds and parking lot upkeep; and repairs and cleaning work needed to keep the Property in a clean, safe, sanitary, and rentable condition that are customarily undertaken or administered by property management services companies. "Ordinary maintenance" does not include repairs that would be considered replacement capital repairs or scheduled regular maintenance work on plumbing, electrical, or HVAC/R systems or their components.

9. REPAIRS AND IMPROVEMENTS TO THE PROPERTY

- a. Contractor shall monitor the Property to determine and identify any repairs that are needed to the Property or the building on the Property, and timely report such needed repairs to WTA, along with the following information: (a) the nature of any damage or condition triggering the need for repair work; (2) the cause of the damage or condition; and (3) the recommended scope of repair work to perform.
- b. Contractor shall monitor the Property to determine and identify any recommended improvements to the Property or the building on the Property, and timely report such potential improvements to WTA.
- c. All repair work and improvements to the Property or the building on the Property will be secured, contracted for, managed and paid for directly by WTA pursuant to the obligations of RCW Chapter 39.04. Contractor shall provide reasonable assistance in association with any repair work and improvements, as requested by WTA.

10. MANAGEMENT OF UTILITIES, PROPERTY EXPENSES AND TAXES

If the Property is leased to a single occupant, then WTA will seek to transfer responsibility for all utilities, property expenses and taxes to the tenant. However, if the Property is leased by multiple tenants or a single tenant cannot assume full responsibility for these obligations/expenses, then the following terms and conditions apply:

- a. Contractor shall be responsible for securing and maintaining any and all utilities, waste disposal, security and other services needed for the Property ("Utilities and Services").
- b. Contractor shall determine and monitor all fees, taxes or other monetary obligations imposed on the Property ("Taxes and Fees").
- c. Contractor shall timely pay all costs and fees for Utilities and Services, and Taxes and Fees on behalf of WTA.
- d. Contractor shall include all advanced payments for Utilities and Services, and Taxes and Fees on its monthly Cost Reimbursement Invoice.

11. INSURANCE

Contractor will maintain all insurance called for in the General Terms.

In addition, Contractor shall secure and maintain Professional Liability Insurance during the Term and otherwise covering all services provided during the Term, with policy limits of at least One Million and No/100 Dollars (\$1,000,000.00), that shall cover the work it is providing to WTA under this Agreement.

Contractor shall provide proof of insurance as well as all required endorsements as called for in the General Terms at the commencement this Agreement, and for each year during the Term.

12. LICENSES AND PERMITS

Throughout the Term Contractor will possess all permits, registrations, and licenses as required by city, state, and Federal ordinances, rules, laws, and regulations. When requested by WTA, Contractor shall provide documents confirming that he/she/it has obtained any business registrations or permits that may be required.

13. FULLY INTEGRATED CONTRACT, TIME OF ESSENCE

This Agreement is the complete expression of the terms and conditions relating to the services to be provided by Contractor to WTA. Any oral representation or understandings not incorporated are excluded. Failure to comply with any of the provisions shall constitute material breach of the Agreement and be cause for termination.

Both parties agree that time is of the essence in the performance of the provisions of this Agreement. The forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of all provisions.

14. ORIGINAL SIGNATURES

Original signatures transmitted and received via electronic transmission of a scanned document (e.g. PDF or similar format) are true and valid signatures for all purposes of this Agreement and shall bind the parties to the same extent as that of an original signature. Signatures submitted electronically must be fully legible to be valid.

15. AUTHORITY TO SIGN

The parties below confirm and attest that they have actual authority to bind WTA and CONTRACTOR to the Agreement.

EXECUTED this _____ day of _____, 2026

WTA:

CONTRACTOR:

Les Reardanz, General Manager
Whatcom Transportation Authority
4011 Bakerview Spur
Bellingham, WA 98226

Date _____

The Contractor agrees to the following general provisions and to the enforceability and binding effect of these terms and conditions against Contractor.

Independent Contractor: An independent contractor relationship will be created by this Contract. The Parties will be acting in their individual, corporate, or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another in performance of this Contract. Contractor shall not make any claim of right, privilege or benefit as would an employee of WTA under any statute or otherwise, including, but not limited to, RCW Chapter 41.06 or RCW Title 51. Contractor shall indemnify and hold harmless WTA from and against any and all costs (including attorneys' fees) or liabilities (including payroll taxes, penalties or interest) arising out of any assertion that the Contractor is not an independent contractor.

Single or No Proposer: In the event that only one proposal is received for a Category or in response to this RFP, WTA may request an extension of the offer period and/or conduct a cost analysis on the single received proposal. The Proposer shall promptly provide all cost or pricing data, documentation and explanation requested by WTA to assist in such analysis. By conducting such analysis, WTA shall not be obligated to accept the single proposal; WTA reserves the right to reject such proposal or any portion thereof. Should there be no proposals received, WTA may issue a new RFP or contract with a vendor of its choosing under its Sole Source process.

Payments: Unless otherwise agreed by the Contractor and WTA, invoices will be paid thirty (30) days from receipt, and subject to WTA's acceptance of the invoiced work and receipt of any required deliverables, goods or services in conformity with the specifications under the Contract. Notwithstanding the above, WTA will adhere to any previously negotiated and agreed upon payment schedule that is memorialized and agreed to in writing and contained or incorporated in an executed contract, including any terms based upon negotiated milestones.

Duty to Inform: If at any time during the performance of this Contract, the Contractor becomes aware of any nonconformance with any contract document, Federal, state, or local law, rule, or regulation, the Contractor shall give immediate written notice thereof to WTA's Procurement & Contracts Manager.

Taxes: Contractor will include applicable Washington State sales and local tax as a separate line item on the invoice, excluding Federal Excise Tax, and supply exemption certificate when necessary.

Inspection and Acceptance: Services performed for and goods provided to WTA will be monitored and inspected, with payment conditioned upon acceptance by WTA's Project Manager or designee. Acceptance of any portion of the services or goods to be provided does not release the Contractor from liability for faulty workmanship or goods, or failure to comply with all Contract terms and conditions. WTA may inspect all goods and services at any time during the Contract term. WTA may, in its discretion and in addition to all other remedies available to it, reject goods or services not conforming to specifications or other Contract terms. Until delivery & acceptance by WTA, risk of loss or damage to goods or finished work will be with the Contractor unless the loss or damage is caused by WTA's negligence.

Conflict of Interest: WTA officers, employees, agents, or Board members will not solicit or accept gifts, favors, or anything of monetary value from Proposers. Any WTA officer, agent, employee, or Board member with a perceived or actual financial or other interest in the award of this proposed contract will recuse himself/herself from any evaluation or decision on any proposal.

Proposers and their staff must declare any perceived or actual conflict of interest. For example, a conflict of interest

would arise if a Proposer or staff did the following:

- Assists in the creation of the scope of work. This includes, but is not limited to, reviewing and commenting on the preliminary scope in whole or part, assisting staff in specification writing, or recommending the use of a particular brand or supplier/distributor in the specification or evaluation of proposals.
- Has access to nonpublic information during the performance of an earlier contract or has been provided with information other contractors have not during procurement.
- Assists in the creation of a project budget.
- Has a personal or professional relationship or affiliation (past or present) with a member of the evaluation or project team.
- Has a financial gain from the recommendation and/or purchase of a particular good or service relating to a contract or potential contract. (e.g. distributor/manufacturer relationship)

WTA will review all conflict of interest statements and notify the Proposer of its decision to allow or reject a proposal as it pertains to the conflict.

In the event that a conflict of interest is discovered post-award, this will be considered a breach of contract and the contract will be terminated under the terms and conditions provided. The Proposer must pay any additional costs incurred by WTA to engage another contractor to finish the work.

Request for Clarification, Deviation, or Substitutions: Any Proposer(s) believing a contract term or scope requirement is unnecessarily restrictive or wishing to propose an alternate must submit their request using WTA's procurement portal by the deadline provided in the Procurement Schedule. Requests submitted after this date, or as a proposal condition will not be reviewed or considered. WTA will not agree to terms or conditions to the contract after proposals are submitted and conditioned proposals may be rejected as non-responsive. Any changes or requests pertaining to the contract must be made evident prior to the close of the procurement. Further detail on this policy can be found in the General Terms and Conditions attached to this solicitation.

Establishment of Contract Based Upon Notice of Intent to Award: The RFP and the Proposal submitted constitute an "offer" and "acceptance" of all of the terms and conditions for an enforceable contract, subject to WTA's formal award of a bid, which remains in its exclusive discretion. Once a proposal is accepted and awarded by WTA, the parties will have an enforceable "contract" whose terms and conditions will comprise those set out in the RFP and the proposal. WTA reserves the right to seek to have such contract enforced, and to seek specific performance from the successful Proposer based upon the terms set out in the RFP and the proposal.

Submission of a proposal grants WTA the right to enforce the parties' agreement without the need for a signed Contract, based upon the existence of an enforceable agreement between the parties, whose terms and conditions shall comprise the RFP and proposal.

Any unapproved deviations, exceptions, substitutions, alternates, or conditions contained in a proposal are cause for the proposal's rejection as non-responsive.

THE ONLY WAY THAT THE SUCCESSFUL PROPOSER MAY MODIFY, AMEND OR AVOID ANY TERM AND CONDITION SET OUT IN THE RFP IS TO REQUEST A DEVIATION OR SUBSTITUTION BY THE CLARIFICATION DEADLINE GIVEN IN THE SOLICITATION DOCUMENT. UNLESS A REQUEST IS PRESENTED BEFORE THE DEADLINE, AND ACCEPTED BY WTA IN WRITING AS AN ADDENDA, ALL TERMS AND CONDITIONS OF THE RFP SHALL BE BINDING AND ENFORCEABLE AGAINST THE SUCCESSFUL PROPOSER.

Contract Modifications/Change Orders: No changes, modifications or amendments to the Contract, including these terms and conditions, prices, quantities, scope of work, or specifications otherwise negotiated or included as part of the Contract or solicitation shall be effective without a prior writing executed by the Parties. Oral changes or modifications are not permitted nor enforceable and will not be paid for by WTA. Only WTA's General Manager, or his/her designee, shall have the authority to alter, amend, modify, add, or waive any section or condition of the Contract on behalf of WTA.

Either party may initiate a change request that is reasonably within the general scope of the Contract. Such changes might include but are not limited to: the method of operations, requirements for record keeping, and emergency service. WTA may add or delete items, services, or locations, provided such items, services, or locations which could reasonably be related to those originally contracted items, services or locations and will not represent a significant increase or decrease in size or scope of the Contract. After receipt of a written change request from WTA, Contractor shall submit any request for equitable adjustment in the Contract Sum and or Contract Time. Any requested adjustment in the Contract Sum must be consistent with the original price and relate to the original scope of work. Any request for adjustment of the Contract Time must be reasonable and demonstrate continued efficiency and productivity. Failure to agree to any adjustment shall be a dispute resolved through the Dispute Resolution clause; however, nothing shall excuse the Contractor from proceeding with the Work as agreed.

If the time of Contractor's performance is changed due to an act of Force Majeure or the fault or negligence of WTA or anyone for whose acts WTA is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract Time. 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.

If it is determined a change is necessary and immediately required to avoid causing undue harm to WTA or the public, the Project Manager, or designee may direct Contractor to proceed immediately with a Critical Directive Change or a Field Authority Change on a time and materials basis. A price proposal for the change must be submitted to the Project Manager and approved by WTA in writing no more than ten (10) business days after the authorization is applicable.

Any Change Order to the Contract Sum shall constitute final settlement of all claims that Contractor may have against WTA. Under no circumstances shall WTA pay for indirect or consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to any Work whether covered or affected by the Change Order, or related to the events giving rise to the request for equitable adjustment to the Contract Sum.

If WTA 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, WTA shall provide Contractor with its final offer. If Contractor does not accept WTA's final offer within seven (7) calendar days, or the parties are otherwise unable to reach agreement, Contractor's only remedy shall be to file an appeal through the Dispute Resolution clause.

Responsibility Review: WTA will only award to Proposers who have the ability, willingness, and integrity to conform to all requirements of the proposal and subsequent contract. This includes, but is not limited to:

- Demonstration that there are no outstanding and/or repetitive violations with Labor and Industries, Department of Revenue, or Employment Security.
- Possession of all permits, registrations, and licenses as required by city, state, and Federal ordinances, rules, laws, and regulations. When requested by WTA, Proposer shall provide documents confirming that he/she/it has obtained any local business registrations or permits that may be required.
- Demonstration that Proposer is skilled and regularly engaged in the general class or type of work called for under the contract.
- Demonstration that Proposer has performed satisfactorily on other contracts of like nature, magnitude, and comparable difficulty, and at comparable rates of progress.

To establish Proposer's responsibility, WTA will review all material submitted with a proposal. WTA may also independently obtain additional information and conduct independent investigation, including, but not limited to, obtaining copies of business licenses and/or professional licenses and certificates, obtaining financial reports, verifying DBE/MWBE status, reviewing records with the Better Business Bureau, reviewing references, and checking debarment lists. WTA reserves the right to interview references, perform internet searches, review Dunn & Bradstreet reports, and use any other investigative means it chooses. A Proposer must timely provide all requested information.

Supervision and Coordination: Contractor shall: 1) competently and efficiently, supervise and direct the implementation and completion of all Contract requirements specified herein; and 2) designate a representative for the Work under this Contract to which all communications given by WTA to the representative shall be binding on Contractor.

Travel Costs: Any travel will be pre-authorized by WTA in writing. Travel costs will be reimbursed to consultants and sub-consultant(s) as follows. Detailed receipts or other proof of expense are required to be fully reimbursed. WTA will not pay any mark-up or per-diem incentive. A credit card receipt will not be accepted in lieu of a detailed receipt.

Receipts are not required for meals covered by per diem and for miscellaneous expenses under \$10 a day.

- Meals & Incidentals per GSA.gov rates at the time of travel based on the destination.
- Mileage will be based on GSA.gov rates at the time of travel.
- Air fare and baggage will be based on the most economical flights with reasonable routing. Business class or first class tickets will not be reimbursed.
- Hotel will be moderately priced and conveniently located. WTA will not reimburse charges for unused rooms.

Expenses including, but not limited to, laundry (unless staying more than 5 nights), in-room movies, Rental Car, flight, or other travel insurance, room upgrades or concierge floors, medical expenses, alcohol, damage/theft, fines, tickets, or lost luggage or personal item replacement costs, will not be reimbursed. A complete list of Non-Reimbursable Expenses is available upon request.

Service of Notice: All Contract notices, orders, directions, requests, waivers, and other communication must be in writing. Verbal notices will not be accepted. Notice is considered received within five (5) business days after issue. Notice may be given via fax, email, posted at the work site or mailed to the Contractor at the address provided in the Contract. If mailed, any form of communication will be deemed to have been given to and received by the Contractor five (5) business days after the postmark date.

Safety Measures: All work under this Contract will be performed in a safe manner. The Contractor will be solely responsible for conditions of the job site, including safety of all persons and property during performance. This requirement will not be limited to normal working hours. The Contractor will exercise every precaution at all times for the prevention of accidents and the protection of people and property.

Compliance with Laws: Contractor and all subcontractors shall comply with all applicable federal, state, and local laws and regulations, including the Federal Occupational Safety and Health Act of 1970 (OSHA), the Washington Industrial Safety and Health Act of 1970 (WISHA), Washington State Department of Labor and Industries (WA-LNI) and the standards and regulations issued. WTA will not make adjustments for loss of time or disruption of work caused by any actions against the Contractor. If the Contract is financed with FTA assistance, it must comply with applicable federal requirements including Buy America, Lobbying, and debarment. Any applicable law or regulation change will apply to the Work as required.

Contractor shall comply with WTA environmental standards and applicable portions of the following statutes, ordinances and regulations and such other regulatory measures pertaining to environmental pollution and the preservation of public natural resources as identified by WTA or other public agencies as applicable to the Work.

- Federal. Natural Environmental Policy Act of 1969, 42 USC 4321 et Seq.; Executive Order 11514; Clean Water Act, 33 USC 1251 et seq.;
- State. Water Pollution Control Act, Chapter 90.48 RCW; State Environmental Policy Act of 1971, Chapter 43.21C RCW and WAC Chapter 197-10; Noise Control Act of 1974, Chapter 70.107 RCW; Washington Clean Air Act, Chapter 70.94 RCW and WAC Chapter 1; Shoreline Management Act of 1971, Chapter 90.58 RCW.
- Regional. Any applicable Air Pollution Control District regulations.
- Whatcom County. Any applicable County ordinances and regulations.
- Local. Any applicable City of Bellingham, City of Lynden, City of Ferndale ordinances and regulations.

Contractor shall give the notices required by law and comply with all laws, ordinances, rules and regulations pertaining to the conduct of the Work. Contractor shall be liable for violations of the law in connection with work it/he/she provides. If the Contractor observes that any applicable drawing, specification, or other portions of the Work are contrary to any laws, ordinances, rules or regulations, WTA must be notified promptly in writing. WTA shall promptly review the matter and, if necessary, issue a change order or take any other action necessary to bring about compliance with the law, ordinance, rule or regulation in question. Contractor agrees not to perform Work known to be contrary to any laws, ordinances, rules or regulations.

Access to Records and Sites of Project Performance: All records prepared, generated or used by Contractor or its agents, employees and subcontractors relating to the Contract are subject to being a "Public Record" under RCW Chapter 42.56, and therefore disclosable subject to a properly submitted public records request under this statute. In addition, as a recipient of state and federal funds, WTA agrees to provide, and require its Contractor and sub-contractors at each tier to provide, sufficient access to inspect and audit all books, records, accounts, reports, and job sites relating to the Work to the:

- a. U.S. Secretary of Transportation or the Secretary's duly authorized representatives;
- b. Comptroller General of the United States, and the Comptroller General's duly authorized representatives;
- c. Washington State Auditor's Office and their duly authorized representatives; and
- d. WTA, member agencies, and its Contractors.

Contractor and sub-contractors at each tier will maintain all books, records, accounts and reports relating to the Project for no less than seven (7) years after the date of Contract termination, expiration, or completion. In the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain all books, records, accounts and reports relating to the project until conclusion of all such litigation, appeals, claims or exceptions related thereto.

Licenses, Permits and Taxes: Contractor shall obtain all permits and licenses, pay all charges, fees and taxes, and give all notices necessary to perform the services for or provide the goods called for under the Contract to WTA.

Civil Rights Requirements and Discrimination: Contractor shall not discriminate on the basis of race, religion, creed, color, national origin, gender, gender identity or expression, sexual orientation, marital status, sensory, mental, or physical disability, veteran status, medical condition, ancestry, or other basis prohibited by local state, or federal law, unless based upon a bona fide occupational qualification in the performance of this Contract, or in any hiring or employment resulting from this Contract. Contractor shall comply with the Federal Civil Rights Act of 1964, the Equal Employment Opportunity Act, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, and their regulations. Contractor shall include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA.

Personal Liability: In no event shall any official, officer, employee, or agent of the WTA be personally liable or responsible for any term or condition of this Contract or statement whether expressed or implied, and Contractor waives any such claim that it may have arising from the Contract.

Assignment: This Contract may not be assigned by Contractor to a third party without the prior written consent of WTA which shall be in its sole discretion. WTA may terminate the contract for convenience as outlined herein. A conveyance of more than fifty percent (50%) of the ownership interest in Contractor shall constitute an "assignment" which must be approved by WTA. In the event of an unauthorized assignment by Contractor, WTA may terminate the Contract for convenience as outlined herein. Involuntary assignment of the Contract due to bankruptcy or receiver appointment from Contractor's insolvency is considered breach of the Contract and subject to termination. WTA may assign the Contract without need for any consent of Contractor.

The grants, covenants, conditions and claims, rights, powers, privileges and liabilities obtained in the Contract Documents will transfer from the Contractor and WTA to their respective heirs, executors, administrators, successors and assigns.

Project Time Limit: All goods and services shall be provided within negotiated time periods. Modifications to any time periods or the Contract Time will only be granted by WTA if Contractor is delayed by causes outside of its/his/her control, such as weather, nature, labor stoppages, or Force Majeure event. During periods when weather or other conditions are unfavorable for performing Work, the Contractor shall pursue only such portions of the Work that are not adversely impacted. No portions of the Work where acceptable quality or efficiency will be affected by unfavorable conditions shall be performed while those conditions exist.

If work falls ten (10) calendar days or more behind the accepted schedule, Contractor agrees to take all reasonable actions, including some or all of the following, to return the project to the accepted schedule:

1. increase manpower in quantities and crafts;
2. increase the number of working hours per shift, shifts per working day, working days per week, or amount of equipment, or any combination thereof; or
3. reschedule activities.

If requested, Contractor will propose a schedule revision to WTA's Project Manager demonstrating a plan to make up the lag in progress, return the project to the accepted schedule and insure completion of the Work within the

Contract Time. The schedule shall be adjusted upon a revised schedule only if approved by WTA in writing. All actions to return the project to the accepted schedule are at the Contractor's expense.

The Contractor shall pay all costs, expenses and fees, including attorneys' fees, incurred by WTA which result from the Contractor's action to return the project to its accepted schedule. Contractor agrees WTA may, in its discretion, deduct such charges from payments due the Contractor. It is further understood and agreed that monitoring, reviewing, and reporting project status and progress by WTA's Project Manager shall not relieve the Contractor of responsibility for planning and managing work according to the original schedule.

If Contractor fails to work for more than seven (7) business days as called for under the Contract, and is not excused, WTA may terminate the Contract and complete the Contract on its own or through another contractor. In such event, Contractor shall be responsible for all expenses reasonably incurred by WTA in completing the Work, above and beyond the original Contract sum, and all legal, or other costs associated with the Contract termination.

Delays and Extensions of Time: Contractor waives claims for damages for any hindrance or delay in performing under the Contract, except those incurred for unreasonable delays caused by WTA. WTA may, in its discretion, grant Contractor equivalent extensions of time caused by any hindrance or delay, under the following circumstances:

- Delay caused by any suit or other legal action by someone other than Contractor against WTA, unless the delay exceeds ninety (90) calendar days. In such instance, WTA may, upon written request of the Contractor, either negotiate a Contract termination or grant a further extension of time, whichever is in the best interest of WTA.
- Time lost due to inclement weather which could not have been reasonably anticipated by Contractor, but only subject to the approval of WTA. Delays due to weather conditions which are not abnormal (precipitation as rain, hail, or snow, low temperature, a windstorm, ice, snow, and other weather conditions that could reasonably have been anticipated from the National Weather Service historical records of the general locality of the Work) shall not be regarded as unavoidable as the Contractor agrees to plan his work with prudent allowances for potential interference by normal weather conditions.
- Should abnormal conditions prevent the work from beginning at the usual starting time or prevent the Contractor from proceeding with seventy-five percent (75%) of the normal labor and equipment force for a period of at least five (5) hours per day, and the crew is dismissed as a result, they will not be charged for a working day.
- Time lost due to a strike, fire, flood, a natural disaster, or events which are unavoidable, not the fault of or are beyond the control of the Contractor.

It is understood and agreed by the Contractor and WTA that extensions due to unavoidable delays will be granted only for delays involving controlling operations preventing project completion within the specified Contract Time. Except for WTA caused delays, the Contractor's only remedy for unavoidable delays shall be a request for an extension of time. If WTA later determines that there was an excusable reason for untimely performance, it may in its discretion allow Contractor to continue work under a new performance schedule or terminate for convenience.

WTA may grant an extension of time if an extension is in WTA's best interest. A condition for granting any such extension shall be Contractor's payment of WTA's actual costs, damages and fees (including but not limited to attorneys' fees) incurred because of the delay and/or extension, including, but not limited to, charges for engineering, staffing, inspection, general supervision, and overhead incurred during the extension.

Force Majeure

- a. **No Liability.** Neither party will be liable for performance delays nor for non-performance due to causes that were not reasonably foreseeable, unavoidable and (a "Force Majeure") beyond its/his/her reasonable control, except for payment obligations for services or goods previously received by WTA.
- b. **Best Efforts to Cure.** In the event of a threatened default or default caused by a Force Majeure the defaulting party shall nonetheless exercise its/his/her best efforts to avoid and cure such default.
- c. **Right to Terminate.** In the event that a Force Majeure prevents performance thereunder for a period in excess of ninety (90) calendar days, then the non-defaulting party may elect to terminate this Contract and/or cancel or suspend any Purchase Orders thereunder by a written notice to the defaulting party.

For purposes of this Agreement, a Force Majeure shall be an event that prevents the Contractor from proceeding with at least seventy-five percent (75%) of its/his/her normal labor and equipment force for at least five (5) hours per day toward completion of any current controlling item on an accepted critical path schedule, and such was outside the control of the Contractor. Such causes include, but are not limited to, war, riot, government action, act of God or public enemy, damage to or destruction of facilities, strike, a labor dispute, plague, pandemic, epidemic, or apocalypse.

Suspension of Contract: WTA may, at any time and without cause, suspend the Contract or any portion thereof for a period of not more than thirty (30) calendar days by written notice to the Contractor. Contractor shall resume performance within fifteen (15) calendar days of written notice from WTA.

Termination for Convenience: WTA may terminate all or part of this Contract by providing written notice, when in WTA's best interest. In such case, Contractor shall deliver to WTA any goods and/or work completed, and equipment or property of WTA. Contractor will invoice WTA for services provided prior to termination, or goods accepted by WTA, within thirty (30) days of receiving notice of termination for convenience and shall be entitled to the Contract price for such accepted services or accepted goods. WTA reserves the right not to pay invoices submitted past thirty (30) calendar days.

Notice of Breach of Contract: The parties will immediately notify one another in writing once the notifying party becomes aware of any breach of this Contract, or commission of an error or omission. Any work done by Contractor after such discovery and before an acceptable remedy has been bilaterally agreed on and documented as a Change Order as outlined above will be done at the Contractor's risk and with no obligation by WTA to pay for any services or products provided.

Opportunity to Cure: Where Contractor has breached this Contract, WTA may, in its sole discretion, allow Contractor up to thirty (30) calendar days to cure the breach, unless another timeframe is otherwise negotiated and agreed on between the Parties. In such case, WTA will detail in writing what the Contractor must do to remedy the breach and the timeframe to complete the remedy.

Default: If Contractor breaches any term of the Contract and fails to cure such breach within any cure period that WTA may allow, WTA may terminate this Contract for default by providing three (3) days written notice to Contractor. Contractor may invoice WTA for goods and services provided and accepted by WTA prior to termination at the Contracted price. WTA reserves the right not to pay invoices submitted past thirty (30) days. In addition to the right to terminate, WTA may seek and recover any other available remedies allowed by law against Contractor and its sureties caused by default. These remedies include procurement of replacement goods or services from another provider, attorneys' fees, and/or recovery of its damages, attorneys' fees and costs from Contractor or

other administration costs as necessary.

If WTA later determines that there was an excusable reason for Contractor's breach, it may in its discretion allow Contractor to continue work under a new performance schedule or terminate for convenience.

Dispute Resolution: Contractor must recognize the following procedures in terms of any dispute relating to the interpretation, enforcement or alleged breach of the Contract by WTA:

1. **WTA Administrative Review.** Contractor must first submit a request for administrative review of the dispute to the WTA Project Manager, who shall determine whether the request is within his/her authority, and if so, whether to grant Contractor's relief. If Contractor is not satisfied with the Project Manager's decision, then it/he/she shall submit a request for administrative review of the dispute to the WTA Procurement within ten (10) business days following the Project Manager's decision. Procurement shall determine whether the request is within his/her authority, and if so, whether to grant Contractor's relief.

If Contractor is not satisfied with Procurement's decision, then it/he/she may submit a request for administrative review of the dispute to the Finance Director or Designee within ten (10) business days after receipt of Procurement's decision. The request to the Finance Director may be made via certified mail, facsimile, or email and will be considered received within three (3) business days of the post mark or send date. Such notice shall include a detailed account of the legal and factual grounds of the protest, all relevant documents, and the Contractor's desired outcome. The Finance Director will provide a written determination within sixty (60) business days of notification unless a resolution is time sensitive in which case a decision will be made within ten (10) business days. If a written decision is not provided within sixty (60) business days or a period agreed upon by the parties, then the Contractor's claim shall be deemed denied by WTA. If Contractor is dissatisfied with the Finance Director's decision, then Contractor shall file an appeal to WTA's General Manager within ten (10) business days of receipt of the Finance Director's decision. The General Manager will make a written determination to the Contractor that shall be final and conclusive within thirty (30) business days. If a written decision is not provided within thirty (30) business days or a period agreed upon by the parties, then the Contractor's claim shall be deemed denied by WTA's General Manager. The General Manager's decision will be considered the final decision of the Administrative Review.

2. **Mandatory Mediation.** If Contractor is dissatisfied with the General Manager's decision, then it/he/she may submit a Notice of Intent to Mediate to WTA within thirty (30) calendar days following receipt of the General Manager's decision. The parties shall mutually agree upon a mediator and conduct a good faith mediation to occur in Bellingham, Washington. If the parties cannot agree on a mediator, then Contractor shall commence an action within the Superior Court of the State of Washington to seek appointment of a mediator. Such action shall be at Contractor's expense. Such mediation shall occur on a date mutually agreeable to the parties, but no later than sixty (60) days following receipt of Contractor's Notice of Intent to Mediate.
3. **Arbitration.** Any action to interpret, enforce or for an alleged breach of the Contract shall be subject to binding arbitration to occur in Bellingham, Washington, pursuant to the American Arbitration Association's ("AAA") Construction Industry Arbitration Rules if the Contract is for construction services, or AAA's Commercial Arbitration Rules in all other cases. Either party may institute such proceeding by providing a Notice of Intent to Arbitrate, or pursuant to RCW Chapter 7.04A. Any arbitration ruling shall be final and may be memorialized as a judgment or challenged under the procedures of RCW Chapter 7.04A. The parties shall equally split the cost of the arbitration, including the arbitrator's fees. The arbitrator shall have the authority

to award the prevailing party its/his/her portion of arbitration costs and fees as part of any final ruling.

4. **Contractor's Conditions to Commence Arbitration and Limitation of Action.** Any arbitration by Contractor against WTA shall be conditioned upon its/his/her presentment and participation in a WTA administrative review process, and mediation. Contractor shall commence any arbitration proceeding within the applicable statute of limitations. Notwithstanding the above, WTA agrees that any applicable period of limitations within which the arbitration must be commenced shall be delayed during any administrative procedure process and for ten (10) business days following any mediation, so long as Contractor submits a request for administrative review to the Project Manager of the dispute prior to expiration of the applicable statute of limitations and timely submits a Notice of Intent to Mediate.
5. **Contractor's Obligation to Continue Work.** Pending final decision of any administrative review, mediation or arbitration, Contractor shall proceed diligently with the performance of the Contract, unless WTA, in its discretion, terminates the Contract.

Protest Procedures: Any party with an interest in the award of the solicitation may file a protest that WTA staff did not follow its own policies and procedures regarding a Procurement Action, or the procedures and restrictions set out in this RFP.¹ Any protest must be submitted in writing to WTA's Procurement & Grants Coordinator, and include the following information:

- a) Name, address, email address, and telephone number of the protester
- b) Signature of the protester or their representative
- c) Identification of the solicitation
- d) Detailed statement of the legal and factual grounds of the protest
- e) Copies of all relevant documents
- f) The form of relief requested

Issues and facts not stated in the Notice of Protest will not be considered.

Time for Filing a Protest. A protest based on alleged improprieties or ambiguities in a **solicitation** must be filed at least seven (7) days before the due date of the bid or proposal. A protest based upon alleged improprieties in an **award** of a contract or a **proposed award** of a contract must be filed within three (3) days after the Notice of Intent to Award has been issued.

Notice of Protest. Procurement shall immediately give notice of a protest to the selected Proposer if a contract has been awarded. If no award has been made, notice will be provided to all Proposers.

Stay of Award. If a protest is filed, the award will be postponed unless the Finance Director determines in writing that:

- a) Reasonable probability exists that the protest will be denied.
- b) Delay of the award would be contrary to the best interests of WTA.

¹ "Procurement Action" includes: specific procurement steps, such as setting the calendar of events; producing the proposal/bid document; advertising the proposal or bid in legal paper of record; maintaining a list of proposal/bid holders; conducting a pre-proposal meeting; responding to all approved equals/clarifications received by the appropriate time and date; addenda issued straightforwardly to all proposal/bid holders; enforcing closing time and date; providing proctoring services to the project manager and evaluation committee; setting criteria weights; conducting interview process with top-scoring Proposers and evaluation committee; creating notes to file regarding the proposal/bid process; issuing award/non-award letters; and maintaining a written record of the procurement.

Review of Protests

Review: The Finance Director shall review and investigate properly filed protests and issue a written decision to the protestor:

- a. A meeting(s) will be called within five (5) working days from receipt of the protest that will include representatives from the WTA and the protestor to discuss the issue(s) related to the protest. The meeting may be conducted by telephone conference if convenient for both parties.
- b. A decision of the protest will be made by the Finance Director within three (3) working days of the final meeting and at the time the protestor shall be notified of the decision in writing by the Director by email or regular mail.
- c. The Finance Director may, at his/her sole discretion, extend the limits of time outlined above.
- d. The decision of the Finance Director shall be final, unless appealed as provided herein.
- e. A request for reconsideration may be allowed if data becomes available that was not previously known, or there has been an error of law or regulation.

Appeal: A Protestor may appeal the Finance Director's formal decision to WTA's General Manager. The written appeal must be received by WTA within two (2) business days after receipt of the written decision by the Protestor, or the appeal will not be considered. Properly filed appeals of the decisions of the Finance Director shall be reviewed and investigated by the General Manager who shall issue WTA's final decision no later than twenty-one (21) days after receipt.

No Waiver of Rights by WTA: WTA's failure to immediately enforce any of its rights shall not be a waiver of its rights to seek enforcement of such right, or to enforce any other rights or remedy under the Contract for any other breach by Contractor.

Applicable Law, Jurisdiction Venue, and Attorneys' Fees: This Contract is executed and governed in interpretation and performance by the laws of the State of Washington. Any action to enforce the Contract shall be filed in the Superior Court for the State of Washington, Whatcom County, and Contractor waives any objection to the jurisdiction and venue of this Court. In any action to enforce or interpret this Contract, the prevailing party shall be entitled to recover, in addition to all other remedies, its reasonable attorneys' fees and costs incurred.

Refusal to Execute Contract: Similarly, Contractor's failure to furnish a performance specific bond, or provide proof of insurance within fifteen (15) days of Contract award or other negotiated time frame, may result in withdrawal of the award, and award the Contract to another bidder/proposer or resolicit.

Severability: If any portion of this Contract is legally unenforceable or invalid, that portion may be renegotiated by the parties. The remaining portions of the Contract shall remain in full force and effect.

Joint Venture and Partnering: In the event the Contractor is a partnership or joint venture of two (2) or more people or entities, each partner and/or joint venture party shall be jointly and severally liable for all grants, covenants, provisos and claims, rights, powers, privileges, and liabilities of the Contract. Notice given by WTA under this Contract given to one partner or joint venture partner shall be deemed notice to all partners and/or joint venture partners. WTA bears no responsibility for notifying all partners or joint venture partners.

Counterparts: Original signatures transmitted and received via electronic transmission of a scanned document (e.g. PDF or similar format) are true and valid signatures for all purposes of this Agreement and shall bind the parties to

the same extent as that of an original signature. Signatures submitted electronically must be fully legible to be valid.

Warranties & Guarantees: Contractor guarantees that goods and services will meet all specification requirements. Goods and services provided by Contractor will be warrantied for a minimum of (1) year after final acceptance of the Work or the date of possession unless agreed upon otherwise.

Contractor shall, upon the receipt of notice in writing from WTA, promptly correct any defective work or replace defective goods. If the defect cannot be corrected, or if the corrected work or good has been rejected by WTA, the Contractor shall promptly remove it and replace it with non-defective work or goods at no cost to WTA. WTA is hereby authorized to make such corrections if, ten (10) business days after giving of such notice to the Contractor, the Contractor has failed to make or undertake the corrections or removal/replacement with due diligence. In case of an emergency where, in the opinion of the General Manager, delay could cause serious loss or damage to WTA property, staff, or the public, corrections or replacements may be made prior to or concurrent with notice being sent to the Contractor. All fees, costs and expenses in connection with such corrections or replacement, including costs for professional services, will be charged to the Contractor. For the corrected or replaced defect, this guarantee shall be extended for a period equal to the time of correction or replacement.

No material, supplies, equipment, or items shall be purchased by Contractor subject to any chattel mortgage, conditional sale, or other agreement by which an interest or in any part is retained by the seller or supplier. Contractor shall warrant good title to all materials, supplies, equipment and items installed or incorporated in the Work. Upon completion, Contractor shall deliver the same, together with all improvements and accessories constructed or placed free from any claims, liens, or charges. Neither the Contractor, subcontractors, nor any person, firm, or corporation furnishing any material or labor covered by this Contract shall record, assert, claim or place any lien against WTA or upon any real or personal property, improvement or accessory of WTA. Nothing, however, shall prevent persons furnishing materials or labor to recover funds under any bond given by the Contractor for the claiming party's protection or any rights under any law permitting recovery against an issued bond. The provisions of this paragraph shall be made a part of all subcontracts and material contracts including goods or services when no formal contract is entered into.

All work, services and materials furnished under this Contract are subject to all warranties or guarantees arising by operation or law and shall conform to the requirements herein, including any manufacturer's warranty. Contractor shall furnish to WTA any guaranty or warranty furnished as a normal trade practice in connection with the Contractor's purchase of any goods and services; provided such guaranty or warranty shall be in addition to those specific requirements for particular materials or work items indicated elsewhere in the Contract Documents.

Contractor warrants to WTA as follows in association with the services or goods to be provided:

- a. Contractor and all its/his/her employees and subcontractors shall be knowledgeable and have proper training to provide the proposed services or goods, and will safely operate any and all equipment associated with the Work;
- b. Contractor will timely pay all wages, salaries, invoices and other compensation or amounts due and owing to its employees, agents, subcontractors and others who provide services or goods to WTA on Contractor's behalf;
- c. all equipment used by Contractor and subcontractors will be suitable to provide the services or goods; and

d. all services or goods provided by Contractor and subcontractors to WTA shall be in conformity with all specifications, terms and conditions of the Contract Documents.

Contractor warrants to WTA that it has the right and all necessary licenses to provide the services or goods and that such services or goods will be of the highest quality; free from liens, infringements and defects, be in conformance with the Contract Documents. In addition to any other obligation to indemnify, defend and hold harmless, Contractor will save and hold WTA harmless, defend and indemnify WTA from all loss, damage, and expense due to liens or adverse claims against WTA for all goods and services provided under the Contract. All services or goods not so conforming to these standards shall be considered deficient. Such duty to defend, indemnify and hold harmless WTA shall extend to any claim made by an employee of Contractor, and to this limited extent, Contractor waives any exclusivity protection provided by the Industrial Insurance Act, RCW Title 51.

Indemnification/Hold Harmless: Contractor shall defend, hold harmless and indemnify WTA, and its agents, employees, representatives, and Board members against and from any all claims, demands, suits, judgments, defense costs, injury to or death of any and all persons(s) and on account of all property damages of any kind, whether tangible or intangible, real and/or personal liability or damages of any kind arising out of: (a) Contractor's goods or services provided to WTA; (b) actions or business operations of Contractor, its/his/her sub-Contractors, their property, employees or agents, or caused in whole or in part by the Contractor, its sub-Contractors, their property, employees, or agents,; (c) Contractor's actions taken under the Contract, or for any breach of the Contract; (d) Contractor's alleged infringement of any intellectual property rights; or (e) Contractor's negligence, errors or omissions, misconduct, violation of any law, unpaid wages or services.

Contractor will defend itself at its own expense in any lawsuit. Such duties shall apply to any claim covered by the above obligation and brought by an employee of Contractor, and in this limited context, Contractor waives any exclusivity protection under any industrial insurance or worker's compensation laws, including, but not limited to, the Washington State Industrial Insurance Act, RCW Title 51.

The Contractor's liability, and/or duty to indemnify, hold harmless or defend shall not be dependent upon whether or not such damage or injury is caused by Contractor negligence, or whether or not such damage or injury is caused by the inherent nature of the services provided.

If a lawsuit that falls within the terms of this indemnity, duty to defend and hold harmless provision ensues, WTA is entitled to select counsel to represent it, and the Contractor shall pay directly all costs, attorneys' fees, and expenses associated with the representation and defense provided to WTA. If judgement is rendered or settlement made requiring payment of damages by WTA, its officers, agents, employees, and volunteers, the Contractor shall pay any judgment amount or award of any other amounts and attorneys' fees or costs.

No Limitations on Contractor Liability: Contractor shall be liable for damages and injury to persons caused by Contractor's performance of this Contract or providing of services or goods to WTA. Contractor shall be liable for any and all damages and injuries suffered by WTA for any breach by Contractor of this Contract, including, but not limited to consequential or incidental damages. Under no circumstances shall there be any limitation on Contractor's liability, or cap on the amount of any damages recoverable against Contractor for any breach of this Contract (WA State Constitution, Article VIII, Section 7 "Credit Not to be Loaned").

Public Records Obligations: WTA complies with RCW Chapter 42.56. This Contract and any other documents relating to this Contract or services or goods provided by Contractor will be disclosed if a Public Disclosure Request (PDR) is submitted. Under no circumstances shall there be any "confidentiality" obligation imposed against WTA. If WTA receives any PDR that includes a request for all or a portion of this Contract or any

documents relating to the Contract or services or goods provided by Contractor, WTA is required to comply with this request under RCW Chapter 42.56, subject to any exception that may apply to WTA. Nonetheless, any information provided by Contractor labeled "Confidential" or "Proprietary" but does not, in WTA's opinion, fall into an exception from public disclosure, will be initially withheld and WTA will notify Contractor of the request. WTA will continue to withhold the confidential or proprietary labeled materials for a total of fourteen (14) days after providing notice. Thereafter, WTA shall release the confidential or proprietary labeled materials pursuant to the PDR, subject to any court order or injunction that Contractor may obtain.

Contractor shall reimburse to WTA all costs and attorneys' fees WTA incurs in any legal action instigated by Contractor or arising from dealing with Contractor's labeling of any documents as "Confidential" or "Proprietary."

Insurance: At the Contractor's own expense, the Contractor shall procure and maintain for the duration of this contract, and for two years thereafter, insurance against claims for injuries to persons or damages to property that may arise out of or in connection with the performance of the Contractor's work including the work of the Contractor's agents, representatives, employees, sub-Contractors or sub-sub-Contractors.

Before beginning work on the project described in this Contact or within 10 days of the execution of the PO, the Contractor shall provide evidence, in the form of Certificates of Insurance, Declarations Page, and Endorsements, of the following insurance coverage and limits (at a minimum). WTA reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. If the Contractor maintains higher limits or broader coverage than the minimums shown below, WTA shall be entitled to the full coverage and limits maintained by or available to the Contractor: The Insurance obligations under this agreement shall be: 1—all the Insurance coverage and limits carried by or available to the Contractor; or 2—the minimum Insurance requirements shown in this agreement, whichever is greater.

1. Commercial general and umbrella liability. Contractor shall maintain commercial general liability in the amount of \$1,000,000 (at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01) and, if necessary to obtain sufficient limits, commercial umbrella or excess insurance with a total limit of not less than \$2,000,000. Coverage shall include, but is not limited to, premise/operations, contractual liability, products and completed operations, independent contractors, property damage, and personal injury/advertising injury. Products and completed operations coverage will remain in force for a period of two years after the completion of the project including the additional insured provisions in Section D.

If a general aggregate is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

WTA shall be named as an additional insured on the contractor's commercial general liability/umbrella liability for both Ongoing Operations and Completed Operations liability.

- Acceptable Additional Insured Endorsements for Ongoing Operations liability are coverage forms at least as broad as the ISO CG 2010 or CG 2026 specifically naming the Transit Agency on the endorsement; or the CG 2033 or CG 2038 "Automatic" forms.
- Acceptable Additional Insured Endorsements for Completed Operations liability are coverage forms at least as broad as the ISO CG 2037 specifically naming the Transit Agency on the endorsement; or the CG 2039 or CG 2040 "Automatic" forms.
- "Automatic" coverage forms CG 2033 for Ongoing Operations and CG 2039 for Completed Operations are not allowed from any subcontractors of the Contractor that do not have a written Contract or Agreement with the Transit Agency.

Excess/Umbrella Liability Insurance – If any excess or umbrella liability policies are used to meet the limits of liability required by this agreement, then said policies shall be “following form” of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this document, including the additional insured and primary insurance requirements stated therein. No insurance policies maintained by the additional insureds, whether primary or excess and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor’s primary, excess and umbrella policies are exhausted.

2. **Business auto liability** for any auto no less than a \$1,000,000 each accident limit. Coverage should be at least as broad as ISO’s commercial auto form (CA 00 01, CA 00 05, CA 00 12, CA 00 20). Contractor may use Business Auto, Umbrella and/or Excess Liability policies combined to meet this requirement. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01.
3. **Workers compensation** in accordance with the provisions of the State of Washington and **Employer’s liability** no less than \$1,000,000 each accident, \$1,000,000 each employee, and \$2,000,000 policy limit.
4. **Electronic Data Liability Insurance (If Required in Solicitation)** Contractor shall maintain electronic data liability insurance and/or Technology Errors and Omissions coverage applicable to the Project and insuring against liability arising out of the loss, loss of use, damage to, corruption or, inability to access, or inability to manipulate electronic data. This coverage shall be maintained with a limit of liability of not less than \$1,000,000

The Contractor is responsible for declaring/disclosing all self-insurance retentions (SIRs) or deductibles maintained or required by any of the Contractor’s insurance and any such SIRs must be approved by WTA. If WTA is required to contribute to the deductible or self-insured retention under any of the Contractor’s insurance policies, the Contractor shall reimburse WTA the full amount of the deductible or self-insured retention. The policy language shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or WTA.

WTA 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 WTA, its officers, officials, employees and volunteers, are to be covered as insured’s 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 for both ongoing and completed operations on a primary and non-contributory basis. WTA shall be endorsed as a loss payee on the Contractor’s builders risk policies.

The additional insured endorsement(s) shall be included with evidence of insurance in the form of a Certificate of Insurance with copies of all required Additional Insured policy endorsements for coverage necessary in sections above (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of listing all policy endorsements to WTA. WTA reserves the right to receive a certified and complete copy of all the Contractor’s insurance policies. If a copy of the Contractor’s insurance policy or policies is requested, the Contractor shall furnish the copy or copies within two weeks of the request.

It is the intent of this contract for the Contractor’s insurance to be considered primary in the event of any loss, damage, or suit. WTA’s own comprehensive general liability policy shall be considered excess coverage to all Contractor’s insurance or available coverage including any umbrella or excess insurance in respect to WTA, WTA’s 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.

The Contractor shall request from his insurer modification of the ACORD certificates to include language that written notification will be given to WTA for any cancellation, suspension, or material change in the Contractor's coverages at least 30 days in advance of such cancellation, suspension, or material change except for non-payment of premium and then 10 days.

The Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein and provide proof of such upon request to WTA.

The Contractor understands that the acceptance of Certificates of Insurance, policies, and any other documents by WTA in no way releases the Contractor from the requirements set forth in this Agreement. The Contractor understands and agrees that any performance bond or insurance protection required by this contract or otherwise provided by Contractor shall in no way limit the responsibility to indemnify, keep, and save harmless and defend WTA. If WTA is damaged by the failure of the Contractor to maintain insurance as required in this Agreement, then the Contractor shall bear all reasonable costs properly attributable to that failure.

The Contractor hereby grants to WTA a waiver of any right to subrogation which any insurer of the Contractor may acquire against WTA by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether WTA has received a waiver of subrogation endorsement from the insurer.