

**Job Order Authorization**

**Job Order Contract**

<b>Date:</b>	07/15/2022	
<b>Project Information</b>	<b>Job Order #:</b>	WTA22003
	<b>Department/Division:</b>	
	<b>Job Order Title:</b>	Midway Lot Bus Charger Federal
	<b>Location Name:</b>	Midway Lot
	<b>Brief Scope of Work:</b>	
<b>Contract Information</b>	<b>Contract:</b>	AD-GN-2021-01
	<b>Contractor:</b>	Burton Construction Inc 3915 E. Nebraska Ave Spokane, WA 99217
<b>Project Costs</b>	<b>Construction</b>	<b>\$149,970.83</b>
	Rule 171: Job Order is tax-exempt	
	<b>Construction Sales Tax -</b>	\$0.00
	<b>Gordian Licensing 1.95%</b>	\$2,924.43
	<b>Sales Tax on License Fee 8.8%</b>	\$257.35
	<b>Gordian Fee 3.05%</b>	\$4,574.11
	<b>Total:</b>	<b>\$157,726.72</b>
<b>Schedule</b>	<b>Project Duration:</b>	
	<b>Start Date (Planned):</b>	
	<b>Completion Date (Planned):</b>	

*Sign below to approve this Job Order*

# Final Scope of Work

Date: 7/15/2022

## Job Order Contracting

**To:** Mike Bozzo  
Whatcom Transit Authority  
4011 Bakerview Spur  
Bellingham, WA 98226  
(360) 303-8291  
mikeb@ridewta.com

**From:** Evan Benjamin  
Burton Construction Inc  
3915 E. Nebraska Ave  
Spokane, WA 99217  
(509) 468-4932  
ebenjamin@burtonconstruction.net

**Contract No:** AD-GN-2021-01  
**Job Order No:** WTA22003  
**Job Order Title:** Midway Lot Bus Charger Federal  
**Location:** Midway Lot  
4011 Bakerview Spur  
Bellingham, WA 98226

### Brief Scope of Work:

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The following items detail the scope of work as discussed at the site. All requirements necessary to accomplish the items set forth below shall be considered part of this scope of work.

  
\_\_\_\_\_  
**Evan Benjamin, Contractor Project Manager**

7/15/22  
Date

  
\_\_\_\_\_  
**Mike Bozzo, WTA Project Manager**

9-13-22  
Date

ANDY BOWLER



**Burton Construction, Inc.**

Phone (509) 468-4932  
Fax (509) 468-5009  
LIC # BURTOCI038MZ  
SDVOSB

3915 E. Nebraska Avenue Spokane, WA 99217-6641

www.burtonconstruction.net

## **Port of Everett – Whatcom Transit Authority**

### **Midway Lot Bus Charger Federal**

### **JOC Project Scope of Work**

**Date: 7/14/22**

1. **Project Title:** Midway Lot Bus Charger Federal
2. **BCI Job #:** PE2028
3. **Location:** WTA Midway Bus Lot
4. **Address:** 4011 Bakerview Spur, Bellingham, WA 98226
5. **Key Stakeholders:**
  - a. End User Rep: Mike Bozzo
  - b. Consultant: Charles Meyer
  - c. BCI PM: Evan Benjamin
  - d. BCI Safety/QC: Jim Bogaert
  - e. BCI Supt: TBD
  - f. Proposed Subcontractors:
    - i. Dahl Electric Inc.
6. **Contract Documents and Drawings:**
  - a. Project Intake Form, Plans provided by WTA

**Project Summary:** Provide labor equipment and materials to supply and installation of copper wiring, cables, conductors and branch circuits per drawings. Installation of power block and dispenser. Permits, equipment start-up, testing and onsite training with Chargepoint.

7. **Key Assumptions:**
  - a. Normal working hours
  - b. Assume contractor will have uninterrupted access to work.

- c. Assume parking and storage areas will be available onsite in bus lot.

**8. Schedule Information:**

- a. Proposed work days/hours: Mon-Fri 7:00 AM to 4:00 PM
- b. Phasing of work: Materials will be ordered and shipped to subcontractor/site. When materials are ready for install, move to site and begin to install materials and equipment. Coordination of install will be with WTA for delivery of charging stations.
- c. Estimated duration *from issuance of NTP*.
  - i. Issue subcontracts and gather submittals: 1 weeks
  - ii. Material lead time from approved submittals: 2-3 weeks
  - iii. Construction: 3 weeks
  - iv. Close-out: 1 weeks
  - v. Total Performance Period: 8 weeks
  - vi. Required Completion Date: NA

**9. Jobsite Safety:**

- a. Temporary fencing or barricades: NA
- b. Traffic control: NA
- c. Temporary signage: NA
- d. Lifts or scaffolding: NA
- e. Hazardous materials: NA
- f. Lock-out/tag-out: Yes
- g. Dust/infection control: NA
- h. Welding or other hot work: NA
- i. Confined space: NA
- j. Heavy equipment: Yes, Forklift
- k. Fire safety: NA
- l. Fall protection: NA
- m. Shoring/trench boxes: NA

- n. Utility locates: NA
- o. Other safety issues: COVID19

**10. Site Logistics:**

- a. Badges and/or background checks: NA
- b. Material lay-down area: Assume using site and area next to work area
- c. Contractor parking: Assume using parking lot
- d. Jobsite security, keys, and/or site access: Yes, will need access to Bus Lot area
- e. Restroom facilities: Porta-potty will be provided by GC
- f. Coordination with shops: Coordinate with WTA personnel

**11. Impacts to Occupants:**

- a. Owner special interest items: NA
- b. Fire alarm deactivation/reactivation: NA
- c. Relocation of personnel and/or equipment: NA
- d. Noise: Yes, during construction
- e. Dust: Minimal
- f. Other: NA

**12. Required permits/agency approval:**

- a. Plan Review: NA
- b. Building Permit: NA
- c. City Electrical Permit: NA
- d. L&I Electrical Permit: Yes, Pulled by electrical contractor
- e. Mechanical Permit: NA
- f. Fire Dept: NA

**13. Detailed Scope in WBS Format:**

EXCLUSIONS

- Non-standard hours
- Work outside of scope of work

- Earthwork (excavation, trenching, backfilling)
- Unforeseen conditions requiring extra work
- Mechanical/plumbing work
- Access control work
- Asbestos or hazardous material abatement

Division 01 – General Conditions

- BCI to provide part-time supervision on site
- Mobilization of equipment and materials
- An electrician to unpackage, assemble and modify owner provided bases
- Forklift for equipment and material placement
- Dump Fees for misc. material

Division 02 – Existing Conditions

- 1” Diameter drilling in concrete for furnished equipment

Division 05 – Metals

- Base anchors at each station at 4 ea per unit

Division 11 – Equipment

- Install bus charging station (owner furnished) 4 ea
- Startup and training with Chragepoint on 4 ea units

Division 26 – Electrical

- Crimp compression connection for bare copper wire install 40 ea
- Mechanical terminations each, power blocks(7) crimp termination each, Dispenser/charger (3) crimp terminations each per each unit (4ea)
- 350 KCmil conductors at 2.5MLF
- #6 AWG Copper strand at 2MFL
- #4 AWG Copper Strand at 1.2MLF
- #3 AWG Copper cable at .5MLF
- 500 MCM Copper cable at 1MLF
- #10 AWG Copper cable at 1MLF
- Install 4 ea owner furnished Power Blocks
- Install 16 ea (4 per unit) Circuit Breakers

**14. Proposed Submittal Items:**

- a. Material Submittals
- b. Safety Plan

# Price Proposal Detail Package Report

Version: 2.0

Approved 07/15/2022 12:58:56 PM EST

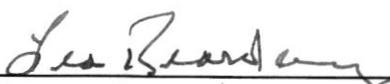
**Date:** July 15, 2022  
**JOC Name (Contractor):** Burton Construction Inc  
**Contract Name:** (ILA) Port of Everett 2021  
**Contract Number:** AD-GN-2021-01  
**Job Order Number:** WTA22003  
**Job Order Title:** Midway Lot Bus Charger Federal  
**Location:** Midway Lot  
**Cost Proposal Date:** July 15, 2022  
**Proposal Value:** \$149,970.83

Division	Division Totals
01 General Requirements	\$5,325.18
02 Existing Conditions	\$253.87
05 Metals	\$404.82
11 Equipment	\$2,966.42
23 Heating, Ventilating, And Air-Conditioning (HVAC)	\$3,696.10
26 Electrical	\$137,324.44
<b>Proposal Total:</b>	<b>\$149,970.83</b>
<b>The Percentage of Non Pre-Priced on this Proposal:</b>	<b>0.00%</b>

By signing the Contractor acknowledges that this Job Order is issued under the provisions of the Contract established in response to Contract #AD-GN-2021-01 by . The services authorized are within the scope of services set forth in the Contract. All rights and obligations of the parties shall be subject to and governed by the terms and conditions, amendment(s) (if applicable), and the signed contract including any subsequent modifications, are hereby incorporated by reference as if fully set forth herein.

  
\_\_\_\_\_  
**Mike Bozzo, WTA Project Manager**  
*Andy Bowler*

9-13-22  
Date

**Project Sponsor**  
\_\_\_\_\_  
  
**Chief**  
*LES PEARDANZ*

\_\_\_\_\_  
Date  
9-13-22  
Date

**Rule 171: Job Order is Tax-Exempt**

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**Proposal Value:** \$149,970.83

Record #	CSI Number	MOD	UOM	Description	Unit Price	Factor				Total	
<b>01 - General Requirements</b>										<b>\$5,325.18</b>	
1	012216000002		EA	Reimbursable Fees							
	<i>Accepted</i>				<b>Quantity</b>	<b>x</b>	<b>Unit Price</b>	<b>x</b>	<b>Factor</b>	<b>=</b>	<b>LineTotal</b>
		Installation	EA		600.00	x	\$1.00	x	1.0000	=	\$600.00
											\$600.00
	<b>User Note:</b> L&I Electrical permit										
2	012220000010		HR	Electrician							
	<i>Accepted</i>				<b>Quantity</b>	<b>x</b>	<b>Unit Price</b>	<b>x</b>	<b>Factor</b>	<b>=</b>	<b>LineTotal</b>
		Installation	HR		8.00	x	\$87.42	x	1.2300	=	\$860.21
											\$860.21
	<b>User Note:</b> Unpackage/assemble owner furnished equipment										
3	012220000010		HR	Electrician							
	<i>Accepted</i>				<b>Quantity</b>	<b>x</b>	<b>Unit Price</b>	<b>x</b>	<b>Factor</b>	<b>=</b>	<b>LineTotal</b>
		Installation	HR		16.00	x	\$87.42	x	1.2300	=	\$1,720.43
											\$1,720.43
	<b>User Note:</b> Modify base of 4 ea owner provided unit										
4	012223000822		WK	5,000 LB Telescopic Boom, Hi-Reach, Rough Terrain Construction Forklift With Full-Time Operator							
	<i>Accepted</i>				<b>Quantity</b>	<b>x</b>	<b>Unit Price</b>	<b>x</b>	<b>Factor</b>	<b>=</b>	<b>LineTotal</b>
		Installation	WK		1.00	x	\$3,404.14	x	1.2300	=	\$4,187.09
											\$4,187.09
	<b>User Note:</b> Equipment supplied by owner										

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5	012223000822	0023	WK	For Equipment Without Operator, Deduct							
	<i>Accepted</i>				<b>Quantity</b>	x	<b>Unit Price</b>	x	<b>Factor</b>	=	<b>LineTotal</b>
			Installation	WK	0.75	x	-\$3,404.14	x	1.2300	=	-\$3,140.32
											-\$3,140.32

**User Note:**

6	017113000002		EA	Equipment Delivery, Pickup, Mobilization And Demobilization Using A Rollback Flatbed Truck							
	<i>Accepted</i>				<b>Quantity</b>	x	<b>Unit Price</b>	x	<b>Factor</b>	=	<b>LineTotal</b>
			Installation	EA	4.00	x	\$211.08	x	1.2300	=	\$1,038.51
											\$1,038.51

**User Note:**

7	017419000032		CY	Traditional Building Construction Materials Landfill Dump Fee							
	<i>Accepted</i>				<b>Quantity</b>	x	<b>Unit Price</b>	x	<b>Factor</b>	=	<b>LineTotal</b>
			Installation	CY	2.00	x	\$24.09	x	1.2300	=	\$59.26
											\$59.26

**User Note:**

<b>02 - Existing Conditions</b>	<b>\$253.87</b>
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8	024119130196		IN	1" Diameter Drilling In Concrete Per Inch Of Depth							
	<i>Accepted</i>				<b>Quantity</b>	x	<b>Unit Price</b>	x	<b>Factor</b>	=	<b>LineTotal</b>
			Installation	IN	80.00	x	\$2.58	x	1.2300	=	\$253.87
											\$253.87

**User Note:** Anchoring bases. 4 in per hole. 20in per base at 4 bases ea = 80in

<b>05 - Metals</b>	<b>\$404.82</b>
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9	050519000019		EA	5/8" Diameter x 5" Length, Zinc Plated Steel, Wedge Anchor Expansion Bolt							
	<i>Accepted</i>				<b>Quantity</b>	x	<b>Unit Price</b>	x	<b>Factor</b>	=	<b>LineTotal</b>
			Installation	EA	16.00	x	\$20.57	x	1.2300	=	\$404.82
											\$404.82

**User Note:** Base anchors at each station at 4 ea for 4 each unit = 16ea

<b>11 - Equipment</b>	<b>\$2,966.42</b>
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10	111136130005	EA	Double Pedestal Electric Vehicle Charging Station With RFID (GE EVDRN3)
	<i>Accepted</i>		
			<b>Quantity x Unit Price x Factor = LineTotal</b>
	Installation	EA	4.00 x \$602.93 x 1.2300 = \$2,966.42
			\$2,966.42

**User Note:** Best match for bus charger. Material removed (owner provided charging stations)

**23 - Heating, Ventilating, And Air-Conditioning (HVAC) \$3,696.10**

11	230923530349	EA	N2 Controllers Commissioning And Download Software (Johnson Controls MW-MTOOL-0)
	<i>Accepted</i>		
			<b>Quantity x Unit Price x Factor = LineTotal</b>
	Installation	EA	4.00 x \$751.24 x 1.2300 = \$3,696.10
			\$3,696.10

**User Note:** Start up/training with Chargepoint personnel. at 4 ea unit

**26 - Electrical \$137,324.44**

12	260513160046	EA	500 MCM Crimp Compression Connection For Bare Copper Wire
	<i>Accepted</i>		
			<b>Quantity x Unit Price x Factor = LineTotal</b>
	Installation	EA	40.00 x \$205.41 x 1.2300 = \$10,106.17
			\$10,106.17

**User Note:** Crimp connection for copper wire. 10 ea for ea unit. 40 ea total

13	260513160082	EA	350 To 500 MCM Cable Termination 15 KV
	<i>Accepted</i>		
			<b>Quantity x Unit Price x Factor = LineTotal</b>
	Installation	EA	40.00 x \$644.87 x 1.2300 = \$31,727.60
			\$31,727.60

**User Note:** mechanical terminations each, power blocks(7) crimp termination each, Dispenser/charger (3) crimp terminations each

14	260519160038	MLF	350 MCM, XLP (XHHW-2), 600 Volt Copper, Single Stranded, Power Cable, Installed In Conduit
	<i>Accepted</i>		
			<b>Quantity x Unit Price x Factor = LineTotal</b>
	Installation	MLF	2.50 x \$11,108.23 x 1.2300 = \$34,157.81
			\$34,157.81

**User Note:** 350 KCmil conductors

# Price Proposal Detail Package Report

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15	260519160091	MLF	#6 AWG, Type USE, 600 Volt, Underground Feeder And Branch Circuits, Single Stranded Copper Cable																								
	<i>Accepted</i>																										
			<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;"></th> <th style="width: 10%;">Quantity</th> <th style="width: 5%;">x</th> <th style="width: 15%;">Unit Price</th> <th style="width: 5%;">x</th> <th style="width: 10%;">Factor</th> <th style="width: 5%;">=</th> <th style="width: 30%;">LineTotal</th> </tr> </thead> <tbody> <tr> <td>Installation</td> <td>2.00</td> <td>x</td> <td>\$1,769.70</td> <td>x</td> <td>1.2300</td> <td>=</td> <td>\$4,353.46</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td style="border-top: 1px solid black;">\$4,353.46</td> </tr> </tbody> </table>		Quantity	x	Unit Price	x	Factor	=	LineTotal	Installation	2.00	x	\$1,769.70	x	1.2300	=	\$4,353.46								\$4,353.46
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Installation	2.00	x	\$1,769.70	x	1.2300	=	\$4,353.46																				
							\$4,353.46																				
	<b>User Note: #6 CU</b>																										
16	260519160092	MLF	#4 AWG, Type USE, 600 Volt, Underground Feeder And Branch Circuits, Single Stranded Copper Cable																								
	<i>Accepted</i>																										
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Installation	1.20	x	\$2,320.48	x	1.2300	=	\$3,425.03																				
							\$3,425.03																				
	<b>User Note: #4 CU</b>																										
17	260519160257	MLF	#3 AWG, XLPE-USE-RHH-RHW, 600 Volt, Copper, Single Stranded Cable, Installed In Conduit																								
	<i>Accepted</i>																										
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Installation	0.50	x	\$2,775.57	x	1.2300	=	\$1,706.98																				
							\$1,706.98																				
	<b>User Note: #3 Copper strand</b>																										
18	260519160268	MLF	500 MCM, XLPE-USE-RHH-RHW, 600 Volt, Copper, Single Stranded Cable, Installed In Conduit																								
	<i>Accepted</i>																										
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Installation	1.00	x	\$15,657.33	x	1.2300	=	\$19,258.52																				
							\$19,258.52																				
	<b>User Note: 1000' of 500 KCMIL for 4 ea units</b>																										
19	260519160275	MLF	#10 AWG, Type SFF-2, 600 Volt, Copper, Single Stranded Cable, Installed In Conduit																								
	<i>Accepted</i>																										
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Installation	1.00	x	\$1,888.14	x	1.2300	=	\$2,322.41																				
							\$2,322.41																				
	<b>User Note: #10 CU</b>																										
20	260583000075	EA	Power Distribution Block, 250 MCM 3 Phase Terminal Block, No Labor Wire Termination, 600 Volt																								
	<i>Accepted</i>																										
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							\$3,210.99																				
	<b>User Note: Install 4 ea owner furnished power blocks</b>																										
21	262419000361	EA	Incoming Line And Feeder Circuit Breaker, Current Limiting Mold, Case Circuit Breakers, 50																								

# Price Proposal Detail Package Report

Version: 2.0

Approved 07/15/2022 12:58:56 PM EST

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<i>Accepted</i>			<b>Quantity</b>	<b>x</b>	<b>Unit Price</b>	<b>x</b>	<b>Factor</b>	<b>=</b>	<b>LineTotal</b>
	Installation	EA	16.00	x	\$1,374.77	x	1.2300	=	\$27,055.47
									<hr/> \$27,055.47

**User Note:** 4 breakers ea unit

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**Proposal Total:** **\$149,970.83**

**The Percentage of Non Pre-Priced on this Proposal:** **0.00%**

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This proposal total represents the correct total for the proposal. Any discrepancy between line totals, sub-totals and the proposal total is due to rounding of the line totals and sub-totals.

## **Federally Required Terms & Conditions**

### **1. No Obligation by the Federal Government.**

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

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

### **2. Program Fraud and False or Fraudulent Statements or Related Acts.**

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

Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

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

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

### **3. Access to Records**

1. Where WTA is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide WTA, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where WTA enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide WTA, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where WTA is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until WTA, the FTA Administrator, the Comptroller General, or any of their duly authorized

representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

#### **4. Federal Changes**

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between WTA and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

#### **5. Termination**

**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.

## **6. Civil Rights & EEO for Construction**

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of 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, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sexual orientation, gender identity, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the

requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(4) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(5) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(7) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(8) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(9) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or

purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(10) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **7. Disadvantaged Business Enterprises**

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for DBE participation is 10%. WTA's overall goal for DBE participation is 1%. A separate contract goal has not been established for this procurement.

A DBE must be certified by the Washington State Office of Minority and Women's Business Enterprises. [www.omwbe.wa.gov](http://www.omwbe.wa.gov) or other Federally recognized UCP. DBE firms shall have equal opportunity to compete for and perform as prime contractors, suppliers, or as subcontractors through another awarded contractor.

- A. DBE and Small Business Enterprise (SBE) outreach and use is required for this contract. Proposers are required to make good faith efforts in recruiting DBE's and SBE's in the preparation of their bids. Examples of good faith efforts to be demonstrated and documented by the prime contractor include the following:
1. Attendance at any pre-solicitation or pre-bid meetings that were scheduled by COTA to inform DBEs of contracting and subcontracting opportunities
  2. Advertisement in general circulation, trade association and minority-focused media concerning the sub-contracting opportunities
  3. Provision of written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBE to participate effectively (and documenting the contact)
  4. Follow-up of initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested
  5. Provision to interested DBEs of adequate information about the plans, specifications and requirements of the contract (and maintaining record of such contract)

6. Negotiation in good faith with interested DBEs not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities (and be able to document any “unqualified”)
7. Soliciting the aid of available minority community organizations; minority contractors’ groups, local, state and federal minority business assistance officers; and other organizations that provide assistance in the recruitment and placement of DBEs (and be able to furnish records of such solicitation)

### **Contractor Requirements**

1. Reporting Requirements: The Contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of contract performance. This report will include, the business name and address, amount of the sub-contract, amount and date of payments.
2. Proposers are required to document all good faith efforts at utilizing DBE’s and SBE’s (Outreach & Participation Schedule). Good faith efforts will be maintained and available upon request. A separate DBE Unavailability Certification is required for each DBE contractor contacted but unable to participate in the project.
3. Proposers will submit, with their proposal, a Determination of Good Faith Effort. Failure to include the determination will be cause for proposal rejection.
4. A Statement of Intent is required from all DBE’s that will be subcontracted work on this contract
5. The successful contractor will be required to submit a Prompt Payment Certification (provided to awarded contractor) and supporting documentation with each Progress Payment. WTA’s Procurement & Grants Coordinator reserves the right to interview subcontractors to verify the information submitted on the Certification.
6. **Prompt Payment:** The prime contractor agrees to pay each subcontractor, if applicable, under this prime contract for the satisfactory performance of its contract no later than ten (10) days<sup>1</sup> from the receipt of each payment the prime contractor receives from WTA. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of WTA. This clause applies to both DBE and non-DBE sub-contractors. With each Request for Payment, Contractor will submit Exhibit K – Prompt Payment Certification as a condition of payment.
7. **Retainage:** The prime contractor agrees to return retainage payments to each subcontractor within sixty (60) days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above referenced time

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<sup>1</sup> RCW 39.04.250

frame may occur only for good cause following written approval of WTA. This clause applies to both DBE and non-DBE subcontracts.

8. **Monitoring and Enforcement:** The prime contractor shall notify WTA Procurement & Contracts Coordinator/DBELO in writing of any delay or postponement of payment beyond thirty (30) days and such written notification shall set forth, with appropriate documentation, the full details of the reasons upon which the prime contractor is basing its actions. WTA shall not be obligated to make a progress payment or final payment to a prime contractor who has failed to make payments promptly to its subcontractors, and for which WTA has made payment, without good cause. The remedies WTA has available to enforce the DBE requirements contained in its contracts include, but are not limited to, the following:
- a. Breach of contract action pursuant to the terms of the contract. The intent of proceeding will be to initiate corrective action on the part of the contractor. If the corrective action is not implemented, the contractor will be terminated in accordance with the terms of the contract.
  - b. Inform the Washington Department of Transportation and FTA of any false, fraudulent, or dishonest conduct regard the DBE Program. Beyond the power of WTA within the contract terms, the Federal government has available the following mechanisms that apply to firms participating in the DBE program:
    - 1) Suspension or debarment proceedings pursuant to 49 CFR Part 26.
    - 2) Enforcement action pursuant to 49 CFR Part 31.

The Contractor will promptly notify WTA's Procurement & Contracts Coordinator/DBELO whenever a subcontractor performing work related to this contract is terminated or fails to complete its work. The contractor must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of WTA.

## 8. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any WTA requests which would cause WTA to be in violation of the FTA terms and conditions.

## 9. Suspension and Debarment

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

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

## **10. Buy America**

By signing and submitting its bid, the Contractor certifies as follows:

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

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A Contractor must submit to the FTA recipient the appropriate Buy America certification with all contracts on FTA-funded contracts, except those subject to a general waiver. Contracts that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Pre-Award and Post-Delivery Audit Requirements - The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

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

(2) Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

## **11. Disputes**

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of WTA's General Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the General Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the General Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

If the parties do not resolve a dispute through initial negotiations, then the matter should be resolved by a mutually agreed-to alternative dispute resolution process. This can include structured negotiations, mediation, or arbitration.

**a. Performance During Dispute**

Unless otherwise directed by WTA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**b. Claims for Damages**

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**c. Remedies**

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between WTA and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Washington.

**d. Rights and Remedies**

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by WTA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**12. Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]**

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any WTA,

a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

### **13. Clean Air**

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the

Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

### **14. Clean Water**

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA

### **15. Cargo Preference/Ship America**

Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

### **16. Fly America Requirements**

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

### **17. Davis Bacon & Copeland “Anti-Kickback” Act**

Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week.

The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

### **18. Contract Work Hours & Safety Standards**

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or

permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - The (write in the name of the grantee) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

### **19. Bonding**

The Contractor and all sub contractors shall provide separate executed Payment and Performance Bonds for the full Contract amount that fully satisfies all requirements of RCW 39.08. Both Bonds shall:

1. Be on a WTA-furnished form
2. Be signed by an approved Surety (or Sureties) that:
3. Is registered with the Washington State Insurance Commissioner;
4. Appears on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner; and
5. The surety or co-sureties should be listed as acceptable surety on federal bonds by the US Department of Treasury,
6. Be conditioned upon the faithful performance of the Contract by the Contractor within the prescribed time
7. Guarantee that the Surety shall hold harmless, indemnify, defend, and protect WTA against any claim of direct or indirect loss resulting from:
8. The failure of the Contractor (or any of the employees, Subcontractors, or lower tier subcontractors of the Contractor) to faithfully perform the Contract
9. The failure of the Contractor (or the Subcontractors or lower tier subcontractors of the Contractor) to pay all laborers, mechanics, Subcontractors, lower tier subcontractors, material, person, or any other person who provides supplies or provisions for carrying out the Work.
10. Any claims, demands, suit, judgment or actions arising out of Contractor's acts or performance of this Contract, or the acts of any Subcontractor of Contractor.
11. For any liens that may be asserted arising out of or relating to the Contract.

WTA may require Sureties or Surety companies on the Contract Bond to appear and qualify themselves. Whenever the Contracting Agency deems the Surety or Sureties to be inadequate, it may, upon written demand, require the Contractor to furnish additional Surety to cover any remaining Work. Until the added Surety is furnished, payments on the Contract will stop.

## **20. Seismic Safety**

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

## **21. Energy Conservation**

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

## **22. Recovered/Recycled Materials**

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

## **23. ADA Access**

Access for Individuals with Disabilities. The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and

agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

- 1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- 2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- 3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- 4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- 5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- 6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- 7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- 8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
- 9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- 10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- 11) Federal civil rights and nondiscrimination directives implementing those Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

#### **24. Solid Wastes.**

A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

#### **25. Safe Operation of Motor Vehicles**

##### **Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or AGENCY.

### **Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

### **26. Trafficking in Persons**

Contractor agrees that it and its employees that participate in the WTA’s Contract Award, may not:

- Engage in severe forms of trafficking in persons during the contract period including all extensions or while WTA’s Federal Award is in effect,
- Procure a commercial sex act during the contract period including all extensions or while WTA’s Federal Award is in effect, or
- Use forced labor in the performance of WTA’s contract or any sub agreements thereunder.

### **27. Notification of Legal Matters**

Contractor agrees to notify WTA immediately if it becomes involved in a current or prospective legal matter that may affect the Federal Government, which includes, but is not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or where the Federal Government may be named as a party to litigation or a legal disagreement in any forum for any reason.

Contractor will immediately notify WTA if it has knowledge of potential fraud, waste, or abuse occurring in relation to this Contract. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

WTA reserves the right to seek all remedies available to it under law, including to procure substitute services or products elsewhere and recover its damages, attorneys' fees and costs from Contractor.

## **28. Environmental Justice**

Contractor will promote environmental justice by following:

- (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, (59 Fed. Reg. 7629, 3 C.F.R. 1994 Comp., p. 859) as well as facilitating compliance with that Executive Order;
- (2) U.S. DOT Order 5610.2(a), "Department of Transportation Updated Environmental Justice Order," 77 Fed. Reg. 27534, May 10, 2012; and
- (3) The most recent edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

## **29. Veterans Preference**

As provided in 49 U.S.C. § 5325(k), to the extent practicable, WTA agrees and assures that each of its Contractors:

- 1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53; and
- 2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

## **30. Historic Preservation**

- (1) Comply with U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as "section 4(f)"), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places.
- (2) Encourage compliance with the federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108.
- (3) Comply with the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501, et seq.
- (4) Comply with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic Properties," 36 CFR Part 800.

- (5) Comply with federal requirements and follow federal guidance to avoid or mitigate adverse effects on historic properties.
- (6) Facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, “Indian Sacred Sites,” May 24, 1996, 42 U.S.C. § 3161 note (61 Fed. Reg. 26771).

The Contractor agrees by submitting a proposal to WTA to the following general provisions and to the enforceability and binding effect of these terms and conditions against Contractor.

**Contract Documents:** The terms and conditions that will govern any contract with Contractor include the following where applicable:

- Executed Contract
- Special Provisions (if applicable)
- Addenda (if applicable)
- These Terms and Conditions
- Scope of Work & Specifications
- Solicitation Response including pricing
- WTA issued solicitation including any Exhibits & Appendices

**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.

**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.

**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.

**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.

**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.

**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.

**Suggestions to Contractor:** Any plan or method of work suggested by either party, but not specified or required in writing under the Contract or confirmed through written change order, will be performed at the risk and responsibility of the Contractor. WTA assumes no liability for work performed outside the scope of the Work or a written and executed change order.

**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 subcontractors 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.

**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 warranted 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.

**Liens:** Contractor shall not allow any liens or other encumbrances to be placed on WTA real or personal property, and shall timely pay any and all amounts due and owing to suppliers, sub-Contractors and others. WTA may demand a certification or lien waiver as a condition of payment of any amounts due and owing to the Contractor.

Contractor shall defend, hold harmless and indemnify WTA from and against any lien that may be asserted, recorded, filed or alleged by any supplier, sub-Contractor or other person arising out of the provided services. In the event a lien is placed against the real or personal property of the WTA, Contractor shall immediately remedy the lien by paying such lien in full, and also pay any related expenses. The Contractor's obligation to defend, hold harmless, indemnify and to pay all liens and related expenses shall exist whether or not any injuries, liens or damages are due to Contractor's actions, negligence, or caused by the inherent nature of the provided services.

The mention of specific duties or liabilities imposed on the Contractor shall not be construed as a limitation or restriction of general duties or liabilities imposed by the Contract. Reference to specific duties or liabilities is made for the purpose of explanation.

**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."