

Appendix A: Contract Terms and Conditions

The Contractor agrees by submitting a bid 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
- These Terms and Conditions
- Issued Addenda (if applicable)
- Appendices
- Invitation to Bid
- Contractor completed Exhibits
- Purchase Orders
- Change Orders

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 sub-contractors at each tier to provide, sufficient access to inspect and audit all books, records, accounts, reports, and job sites relating to the Work to the:

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

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

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

Civil Rights Requirements and Discrimination: Contractor shall not discriminate on the basis of race, religion, creed, color, national origin, gender, gender identity or expression, sexual

orientation, marital status, sensory, mental, or physical disability, veteran status, medical condition, ancestry, or other basis prohibited by local state, or federal law, unless based upon a bona fide occupational qualification in the performance of this Contract, or in any hiring or employment resulting from this Contract. Contractor shall comply with the Federal Civil Rights Act of 1964, the Equal Employment Opportunity Act, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, and their regulations. Contractor shall include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA.

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

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

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

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

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

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

If requested, Contractor will propose a schedule revision to WTA’s Project Manager demonstrating a

plan to make up the lag in progress, return the project to the accepted schedule and insure completion of the Work within the Contract Time. The schedule shall be adjusted upon a revised schedule only if approved by WTA in writing. All actions to return the project to the accepted schedule are at the Contractor's expense.

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

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

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

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

It is understood and agreed by the Contractor and WTA that extensions due to unavoidable delays will be granted only for delays involving controlling operations preventing project completion within the specified Contract Time. Except for WTA caused delays, the Contractor's only remedy for

unavoidable delays shall be a request for an extension of time. If WTA later determines that there was an excusable reason for untimely performance, it may in its discretion allow Contractor to continue work under a new performance schedule or terminate for convenience.

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

Force Majeure

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

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

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

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

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

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

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

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

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

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

If Contractor is not satisfied with Procurement's decision, then it/he/she may submit a request for administrative review of the dispute to the Finance Director or Designee within ten (10) business days after receipt of Procurement's decision. The request to the Finance Director may be made via certified mail, facsimile, or email and will be considered received within three (3) business days of the post mark or send date. Such notice shall include a detailed account of the legal and factual grounds of the protest, all relevant documents, and the Contractor's desired outcome. The

Finance Director will provide a written determination within sixty (60) business days of notification unless a resolution is time sensitive in which case a decision will be made within ten (10) business days. If a written decision is not provided within sixty (60) business days or a period agreed upon by the parties, then the Contractor's claim shall be deemed denied by WTA. If Contractor is dissatisfied with the Finance Director's decision, then Contractor shall file an appeal to WTA's General Manager within ten (10) business days of receipt of the Finance Director's decision. The General Manager will make a written determination to the Contractor that shall be final and conclusive within thirty (30) business days. If a written decision is not provided within thirty (30) business days or a period agreed upon by the parties, then the Contractor's claim shall be deemed denied by WTA's General Manager. The General Manager's decision will be considered the final decision of the Administrative Review.

2. Mandatory Mediation. If Contractor is dissatisfied with the General Manager's decision, then it/he/she may submit a Notice of Intent to Mediate to WTA within thirty (30) calendar days following receipt of the General Manager's decision. The parties shall mutually agree upon a mediator and conduct a good faith mediation to occur in Bellingham, Washington. If the parties cannot agree on a mediator, then Contractor shall commence an action within the Superior Court of the State of Washington to seek appointment of a mediator. Such action shall be at Contractor's expense. Such mediation shall occur on a date mutually agreeable to the parties, but no later than sixty (60) days following receipt of Contractor's Notice of Intent to Mediate.
3. Arbitration. Any action to interpret, enforce or for an alleged breach of the Contract shall be subject to binding arbitration to occur in Bellingham, Washington, pursuant to the American Arbitration Association's ("AAA") Construction Industry Arbitration Rules if the Contract is for construction services, or AAA's Commercial Arbitration Rules in all other cases. Either party may institute such proceeding by providing a Notice of Intent to Arbitrate, or pursuant to RCW Chapter 7.04A. Any arbitration ruling shall be final and may be memorialized as a judgment or challenged under the procedures of RCW Chapter 7.04A. The parties shall equally split the cost of the arbitration, including the arbitrator's fees. The arbitrator shall have the authority to award the prevailing party its/his/her portion of arbitration costs and fees as part of any final ruling.
4. Contractor's Conditions to Commence Arbitration and Limitation of Action. Any arbitration by Contractor against WTA shall be conditioned upon its/his/her presentment and participation in a WTA administrative review process, and mediation. Contractor shall commence any arbitration proceeding within the applicable statute of limitations. Notwithstanding the above, WTA agrees that any applicable period of limitations within which the arbitration must be commenced shall be delayed during any administrative procedure process and for ten (10) business days following any mediation, so long as Contractor submits a request for administrative review to the Project Manager of the dispute prior to expiration of the applicable statute of limitations and timely submits a Notice of Intent to Mediate.
5. Contractor's Obligation to Continue Work. Pending final decision of any administrative review, mediation or arbitration, Contractor shall proceed diligently with the performance of the



Contract, unless WTA, in its discretion, terminates the Contract.

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

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

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

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

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

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

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

Contractor shall, upon the receipt of notice in writing from WTA, promptly correct any defective work or replace defective goods. If the defect cannot be corrected, or if the corrected work or good has been rejected by WTA, the Contractor shall promptly remove it and replace it with non-defective work or goods at no cost to WTA. WTA is hereby authorized to make such corrections if, ten (10) business days after giving of such notice to the Contractor, the Contractor has failed to

make or undertake the corrections or removal/replacement with due diligence. In case of an emergency where, in the opinion of the General Manager, delay could cause serious loss or damage to WTA property, staff, or the public, corrections or replacements may be made prior to or concurrent with notice being sent to the Contractor. All fees, costs and expenses in connection with such corrections or replacement, including costs for professional services, will be charged to the Contractor. For the corrected or replaced defect, this guarantee shall be extended for a period equal to the time of correction or replacement.

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

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

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

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

Contractor warrants to WTA that it has the right and all necessary licenses to provide the services or goods and that such services or goods will be of the highest quality; free from liens, infringements and defects, be in conformance with the Contract Documents. In addition to any

other obligation to indemnify, defend and hold harmless, Contractor will save and hold WTA harmless, defend and indemnify WTA from all loss, damage, and expense due to liens or adverse claims against WTA for all goods and services provided under the Contract. All services or goods not so conforming to these standards shall be considered deficient. Such duty to defend, indemnify and hold harmless WTA shall extend to any claim made by an employee of Contractor, and to this limited extent, Contractor waives any exclusivity protection provided by the Industrial Insurance Act, RCW Title 51.

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."

Insurance: The Contractor shall procure and maintain for the duration of this contract and at Contractor's sole expense, for one (1) year thereafter, insurance against claims for injuries to persons or damages to property that may arise out of or in connection with the performance of the Contractor's work including the work of the Contractor's agents, representatives, employees, sub-Contractors or sub-sub-Contractors.

Before beginning work or within ten (10) days of the execution of a Contract, the Contractor shall provide Certificates of Insurance, Declarations Page, and Endorsements, of the following insurance coverage and limits (at a minimum). WTA reserves the right to require complete, certified copies of all required insurance policies, including required endorsements at any time. If the Contractor maintains

higher limits or broader coverage than the minimums shown below, WTA shall be entitled to the full coverage and limits maintained by or available to the Contractor: The Insurance obligations under this agreement shall be: 1—all the Insurance coverage and limits carried by or available to the Contractor; or 2—the minimum Insurance requirements shown in this agreement, whichever is greater.

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

The Contractor's commercial general liability policy and any umbrella or excess policy shall not contain an exclusion or restriction of coverage of the following:

- Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that claimant is an insured, and there would be otherwise be coverage for the claim,
- Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a subcontractor,
- Claims for bodily injury other than to employees of the insured,
- Claims for indemnity arising out of injury to the employees of the insured,
- Claims or loss excluded under a prior work endorsement or other similar exclusionary language including modification of the "occurrence" definition,
- Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language,
- Claims related to explosion, collapse, and underground hazards, where the Work involves such hazards.

the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be \$2,000,000.

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

- Acceptable Additional Insured Endorsements for Ongoing Operations liability are coverage forms at least as broad as the ISO CG 2010 or CG 2026 specifically naming WTA on the endorsement; or the CG 2033 or CG 2038 "Automatic" forms.
- Acceptable Additional Insured Endorsements for Completed Operations liability are coverage forms at least as broad as the ISO CG 2037 specifically naming WTA on the endorsement; or the CG 2039 or CG 2040 "Automatic" forms.

“Automatic” coverage forms CG 2033 for Ongoing Operations and CG 2039 for Completed Operations are not allowed from any subcontractors of the Contractor that do not have a written Contract or Agreement with WTA.

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

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

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

WTA shall be named as an additional insured on the contractor's commercial general liability/umbrella liability and business auto liability policies and shall contain, or be endorsed to contain, that WTA, it’s officers, officials, employees and volunteers, are to be covered as insured’s with respect to liability



arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor, and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including material, parts or equipment furnished in connection with such work or operations for both ongoing and completed operations on a primary and non-contributory basis. WTA shall be endorsed as a loss payee on the Contractor's builders risk policies.

The additional insured endorsement(s) shall be included with evidence of insurance in the form of a Certificate of Insurance with copies of all required Additional Insured policy endorsements for coverage necessary above (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of listing all policy endorsements to WTA. WTA reserves the right to receive a certified and complete copy of all the Contractor's insurance policies. If a copy of the Contractor's insurance policy or policies is requested, the Contractor shall furnish the copy or copies within two (2) weeks of the request.

It is the intent of this contract for the Contractor's insurance to be considered primary in the event of any loss, damage, or suit. WTA's own comprehensive general liability policy shall be considered excess coverage to all Contractor's insurance or available coverage including any umbrella or excess insurance in respect to WTA, WTA officers, officials, employees, and volunteers, and shall not contribute to the Contractor. Additionally, the Contractor's commercial general liability policy must provide cross-liability coverage as would be achieved under a standard ISO separation of insureds clause.

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

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

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

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



Appendix B: Sample Contract

CONTRACTUAL AGREEMENT VEHICLE DETAILING SERVICE

This AGREEMENT (Agreement) is made and entered into between _____, a Washington State Corporation, (CONTRACTOR) and WHATCOM TRANSPORTATION AUTHORITY (WTA), a Public Transportation Benefit Area operating under the authority of RCW Chapter 36.57A and located at 4011 Bakerview Spur Road, Bellingham, WA, 98226. CONTRACTOR hereby agrees to provide WTA with Vehicle Detailing Services specified Scope of Work referenced in Invitation to Bid 2023-002 for an initial term of three (3) years.

WTA and CONTRACTOR agree as follows:

1. **ORDER OF PRECEDENCE:** The Contract Documents which comprise the entire agreement between WTA and CONTRACTOR concerning the Work consist of the following. Where there is a conflict between documents, the most restrictive will prevail:
 - a. This Agreement
 - b. Appendix A Contract Terms and Conditions
 - c. Invitation to Bid 2022-001
 - d. CONTRACTOR completed Exhibits A – E
 - e. Appendix C

2. **TERM AND TERMINATION:** The term of this agreement shall commence on the execution date below through _____, 2026.

There is one (1) additional contract term of three (3) years, which can be exercised at WTA's sole option with both parties written approval.

3. **COST and PAYMENT:** WTA shall pay CONTRACTOR at Net 30 terms from date of invoice receipt in the amounts specified in Exhibit E, Bid Cost. Contractor will submit invoices no later than the 5th of the month following work performance. WTA reserves the right to refuse payment on invoices for work that completed sixty (60) days prior to the invoice receipt. Year end invoices will be submitted no later than January 20 each year unless otherwise approved in writing by WTA's Accounting Manager or designee.

WTA shall pay CONTRACTOR in US funds for goods & services provided to the address below.

Invoices will be sent to ap@ridewta.com or ATTN: Accounts Payable at the WTA address below.

Price adjustments will be requested by the Contractor no less than 30 days before the Contract anniversary date and be based on. WTA reserves the right to approve, deny, or negotiate any price adjustments.

Contract price decreases and increases will be calculated using the CPI-U with the following parameters to obtain the Series ID CUURS49DSAS:

- Not Seasonally Adjusted

- AREA: Seattle-Tacoma-Bellevue, WA
- BASE: Current
- ITEM: Services
- PERIODICITY: Monthly

Price increases may not exceed 10% from the previous years contract price. Contractors wishing to propose a higher increase will be required to submit additional documentation in support. Documentation may include but not be limited to: actual receipts, maintenance logs with costs, or subcontractor invoices.

4. **CHANGES:** No alterations or variation of any of the terms, conditions, prices, quantities, or specifications of this Agreement shall be effective without prior written consent of WTA's General Manager. Oral changes, amendments or agreements are not permitted and shall not be paid for by WTA. Prior to becoming a contract modification, all changes must be prepared in writing and executed by the Parties. Only WTA's General Manager shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Agreement on behalf of WTA.
5. **INTENTS & AFFIDAVITS:** The Contractor shall be required to file Intent to Pay Prevailing Wage form with the State of Washington at each contract renewal. Contractor shall also file an Affidavit of Wages Paid at the end of each contract term.

WTA will not pay invoices submitted without approved Intents and Affidavits.

6. **NOTICES:** All notices will be provided to:

WTA
ATTN: Procurement
4011 Bakerview Spur
Bellingham, WA 98226
procurement@ridewta.com
360-788-9332

CONTRACT
ATTN:

{---Contact Email---}
{---Contact Phone---}

7. CONTRACTOR shall throughout the term of this Agreement, be a registered with the Washington State Secretary of State as a corporation doing business within the State of Washington and maintain a registered agent in the state of Washington.
8. The parties agree that this Agreement is the complete expression of the terms. Any oral representation or understandings not incorporated are excluded. Failure to comply with any of the provisions shall constitute material breach of the Agreement and be cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. The forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of all provisions.
9. **COUNTERSIGNATURE:** 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.



10. **ACTUAL AUTHORITY:** The parties below confirm and attest that they have actual authority to bind WTA and CONTRACTOR to an agreement.

WTA:

CONTRACTOR:

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

{---Contact Name---}
{---Company Name---}
{---Street1---}
{---City---}, {---State ---} {---Postal Code---}



Appendix C: Vehicle Cleaning Checklist

CHECKLIST FOR FIXED ROUTE COACH PARATRANSIT, and other REVENUE VEHICLES DETAIL CLEANING		CHECK
Special Note: Though not specifically called out in the listed items which follow, all surfaces prone to being touched by transit Passengers and Operators will be sanitized or disinfected as well as cleaned during the detail cleaning process.		

A.	Detail clean front area, to include but not limited to:		
	1	Clean out dirt from around brake and accelerator pedals, and around base of driver's seat. Detail clean floor around driver's seat and driver's pedals.	
	2	Clean instrument panels, buttons and instrument gauge covers.	
	3	Clean front dash cover.	
	4	Clean steering wheel and steering column.	
	5	Clean all horizontal and vertical panels, including fabric covered surfaces and hard surface panels. Fabric covered surfaces will likely need vacuum and/or upholstery cleaning machine treatment to remove dust and dirt.	
	6	Clean/wipe down sun visors.	
	7	Clean rubber bellows beneath drivers' seat and any exposed framework supporting drivers' seat.	
	8	Clean driver's seat.	
	9	Clean metal molding and metal edgework on floor.	
	10	Clean all cracks and crevices of drivers' seat, removing lint, dust and dirt. Spot treat fabric as needed.	
	11	Sanitize radio microphone and remove dust from radio equipment and from underneath radio.	
	12	Clean door panels and door handles.	
	13	Clean all miscellaneous WTA items stored in the front area of the bus.	
	14	Clean outside of first aid kit case.	
	15	Clean waste bin, inside and out, and refill plastic liners.	
	16	Clean orange safety cones. Open cabinet doors and clean inside of cabinets and remove dirt from items inside cabinets (flashlights, red box of safety triangles, and other such items).	
	17	Wipe down fire extinguisher and clean outside of bio-spill kit.	
	18	Clean and polish all exterior surfaces of fareboxes.	
B.	Passenger Seats		
	1	Clean seats and seat backs. Use upholstery cleaning machine as needed to deep clean seats.	
	2	Wipe down seat framework to remove all dust, dirt and smudges.	
	3	Remove any gum, tar or sticky substances from seats and framework.	
	4	Clean corners and crevices on floor and wall below seat.	
	5	Clean metal framework and hardware which connect seats to walls and floors.	
	6	Clean metal & fiberglass framework of seats and hardware which connects seats to walls and floors.	



C. Step areas			
	1	Clean walls and all vertical surfaces in stepwell areas.	
	2	Clean steps, paying special notice to cleaning yellow or white strip portions.	
	3	Wipe off step area light lenses and metal lens hoods.	
	4	Wipe off built up dirt and grease from door hinges.	
	5	Clean handrails on doors and along step well.	
	6	Clean door surfaces, and clean the walls, compartment surfaces and handles overhead and beside doors.	
D. Lift or Ramp			
	1	Extend Lift or Ramp and clean platform.	
	2	Clean Lift or Ramp visibility edge strips.	
	3	Clean any excessive grease, dirt, lint build-up etc. from Lift or Ramp parts and area.	
	4	Clean Lift handles, and handrails.	
E. Floor			
	1	Remove any gum or other substances stuck on floor.	
	2	Scrub floor to remove any dirt build-up and cleaner residue, especially around seat post bases, belt brackets, and near edges where floor meets walls.	
	3	Clean yellow strips.	
	4	Thoroughly clean out metal floor "tracks." Dry moisture from inside of the tracks and floor brackets after cleaning.	
F. Walls and ceiling areas			
	1	Clean walls as needed, hard and soft surface walls.	
	2	Clean ceiling vent units.	
	3	Clean ceiling as needed throughout the year, spot cleaning	
	4	Clean dust, dirt, marks, graffiti, and smudges from upper and lower portions of walls.	
	5	Once per year in each revenue vehicle clean entire hard surface area of ceiling	
G. Posts and handrails			
	1	Clean all posts, grab handles, and handrails.	
	2	Special attention to clean problem areas of posts and handrails, such as near exit door and near farebox. Brushed metal post and handrail finish and yellow padded handrail materials are particularly troublesome and have special cleaning needs since dirt tends to embed in these materials.	



H.	Windows	
	1	Clean the interior surface of all windows.
	2	Vendors' Supervisor on duty is required to clean the inside glass of front windshield.
	3	Pull down shade behind Operator's seat and clean the dirt and greasy fingerprints from these shades.
	4	Clean window framework, to include rut-like sections where dirt and dust and cleaning solution accumulate.
I.	Other	
	1	Sanitize drivers' seatbelts, wheelchair tie-down belts, and passenger belts. Typical method for this will be to wipe the loose dust and dirt from the belts using a hand sanitizer towelette.
	2	Using upholstery cleaning machine clean drivers' seatbelts, wheelchair securement belts, and passenger belts on regularly scheduled intervals and as needed, as determined by drying times and bus availability.
	3	Thank you!