

**CONTRACTUAL SERVICE AGREEMENT
MARKETING & COMMUNITY OUTREACH**

This CONTRACTUAL SERVICE AGREEMENT (Agreement) is made and entered into between WHATCOM TRANSPORTATION AUTHORITY (WTA), a Washington Public Transportation Benefit Area, TEAM SOAPBOX, a Washington state limited liability corporation (CONTRACTOR).

WTA and CONTRACTOR agree as follows:

CONTRACTOR hereby agrees to provide WTA with marketing and community outreach services, for an initial term of one (1) year to commence on 11/18/20, pursuant to the following agreed terms and conditions:

1. The Agreement documents in order of precedence, and the terms and conditions that will govern this Agreement, are set out herein, and in the following documents, which are incorporated by reference:
 - This agreement
 - Small Purchase Request 2020 – 305 Federal Terms and Conditions
 - Small Purchase Request 2020 - 305 General Terms and Conditions
 - CONTRACTOR Proposal and completed forms submitted October 29, 2020
 - Small Purchase Request 2020 - 305 released October 15, 2020
2. CONTRACTOR shall perform all the work required by the scope of work referenced above.
3. WTA may, at its option, renew the agreement one (1) year. Renewal will be by amendment executed by both parties.
4. 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. Notices will be provided to:

WTA ATTN: Procurement 4011 Bakerview Spur Bellingham, WA 98226 procurement@ridewta.com 360-788-9332	CONTRACTOR ATTN: Christine Stepherson Team Soapbox 2815 2 nd Avenue, Suite 555 Seattle, WA 98121 christine@teamssoapbox.com 206-528-2550 ext 1
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6. WTA shall pay CONTRACTOR in US funds for goods & services provided to the address below. The total not-to-exceed value of the contract equals \$44,800.
7. Invoices will be sent to ap@ridewta.com or ATTN: Accounts Payable at the WTA address below. Payment will be made in Net 30 Terms from the date of invoice acceptance. WTA reserves the right to refuse payment on invoices for work that completed sixty (60) days prior to the invoice receipt.
8. 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.
9. 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.

10. 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.

WTA:



Peter L. Stark, General Manager
Whatcom Transportation Authority
4011 Bakerview Spur
Bellingham, WA 98226

CONTRACTOR:



Christine Stepherson, Owner
Team Soapbox
2815 2nd Avenue, Suite 555
Seattle, WA 98121

Magan Waltari

From: Shonda Shipman
Sent: Monday, November 16, 2020 11:43 AM
To: Magan Waltari
Subject: RE: PLEASE ENDORSE: TS - WTA Service Agreement 2020

Endorsed

From: Magan Waltari
Sent: Monday, November 16, 2020 9:56 AM
To: Shonda Shipman <ShondaS@ridewta.com>
Subject: FW: PLEASE ENDORSE: TS - WTA Service Agreement 2020

Magan Waltari, CPPB, CPSM, NIGP-CPP
Procurement & Grants Coordinator
Disadvantaged Business Enterprise Liaison Officer
Whatcom Transportation Authority
Office: (360) 788-9332 / Cell: (360) 303-8291

E-mail to and from this address may be subject to public disclosure under Washington's Public Records Act.

From: Erin Knudson <ErinK@ridewta.com>
Sent: Monday, November 16, 2020 9:53 AM
To: Magan Waltari <maganw@ridewta.com>
Subject: RE: PLEASE ENDORSE: TS - WTA Service Agreement 2020

Endorsed. 😊

Erin Knudson, CPA, CGMA
Accounting Manager
Whatcom Transportation Authority
4011 Bakerview Spur
Bellingham, WA 98226-8056
t: 360-788-9335 / f: 360-788-9535
erink@ridewta.com

Email to and from this address may be subject to public disclosure under Washington's Public Records Act.

From: Magan Waltari <maganw@ridewta.com>
Sent: Monday, November 16, 2020 9:51 AM
To: Erin Knudson <ErinK@ridewta.com>
Subject: RE: PLEASE ENDORSE: TS - WTA Service Agreement 2020

Fixed it. 😊

Magan Waltari, CPPB, CPSM, NIGP-CPP

Procurement & Grants Coordinator
Disadvantaged Business Enterprise Liaison Officer
Whatcom Transportation Authority
Office: (360) 788-9332 / Cell: (360) 303-8291

E-mail to and from this address may be subject to public disclosure under Washington's Public Records Act.

From: Erin Knudson <ErinK@ridewta.com>
Sent: Monday, November 16, 2020 9:50 AM
To: Magan Waltari <maganw@ridewta.com>
Subject: RE: PLEASE ENDORSE: TS - WTA Service Agreement 2020

Is this really for long range plan consulting services?

From: Magan Waltari <maganw@ridewta.com>
Sent: Monday, November 16, 2020 9:44 AM
To: Erin Knudson <ErinK@ridewta.com>
Subject: FW: PLEASE ENDORSE: TS - WTA Service Agreement 2020

Thanks

Magan Waltari, CPPB, CPSM, NIGP-CPP

Procurement & Grants Coordinator
Disadvantaged Business Enterprise Liaison Officer
Whatcom Transportation Authority
Office: (360) 788-9332 / Cell: (360) 303-8291

E-mail to and from this address may be subject to public disclosure under Washington's Public Records Act.

From: Maureen McCarthy <MaureenM@ridewta.com>
Sent: Monday, November 16, 2020 9:33 AM
To: Magan Waltari <maganw@ridewta.com>
Subject: RE: PLEASE ENDORSE: TS - WTA Service Agreement 2020

I endorse!

From: Magan Waltari <maganw@ridewta.com>
Sent: Thursday, November 12, 2020 2:48 PM
To: Maureen McCarthy <MaureenM@ridewta.com>
Subject: PLEASE ENDORSE: TS - WTA Service Agreement 2020

😊 Please endorse!

Magan Waltari, CPPB, CPSM, NIGP-CPP

Procurement & Grants Coordinator
Disadvantaged Business Enterprise Liaison Officer
Whatcom Transportation Authority
4011 Bakerview Spur
Bellingham, WA 98226-8055
Office: (360) 788-9332 / Cell: (360) 303-8291
Fax: (360) 788-9532

maganw@ridewta.com

E-mail to and from this address may be subject to public disclosure under Washington's Public Records Act.

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.
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)

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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

(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, 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

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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, creed, national origin, sex, or age. 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. 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 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 0%. 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. DBE firms shall have equal opportunity to compete for and perform as prime contractors, suppliers, or as subcontractors through another awarded contractor.

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- 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

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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) days¹ 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 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

¹ RCW 39.04.250

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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.

(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

10. 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.

11. 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.

12. 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.

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."